94 2 2-19-08

No. 07-1087

IN THE

Supreme Court of the United States

October Term 2007

MARY SCOTT DOE, a human embryo "born" in the United States (and subsequently frozen in which state of cyro-preservation her life is presently suspended), individually and on behalf of all other frozen human embryos similarly situated; and the National Association for the Advancement of Preborn Children (NAAPC), Peter Murray and Suzanne Murray, Courtney Atnip and Tim Atnip, Steven B. Johnson and Kate Elizabeth Johnson, and Cara Vest and Gregory Vest,

Petitioners,

v.

ROBERT KLEIN, II, Chairman, et al.,

Respondents.

Petition For A Writ Of Certiorari
To The United States Court Of
Appeals For The Ninth Circuit

APPENDIX

RUDOLPH MARTIN PALMER, JR.
COUNSEL FOR PETITIONERS
LAW OFFICES OF MARTIN PALMER
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SUPREME COURT, U.S.

TABLE OF CONTENTS

Page

Judgment and Opinion of Ninth Circuit in *Doe v. Klein*, Dated November 15, 2007 . . . . . A-1

Order by Judge Ronald S. W. Lew granting Defendants' Motion to Dismiss for Improper Venue, without prejudice, and denying Defendants' alternative motion to transfer as moot, entered November 8, 2005 . . . . . A-3

Order by Judge Ronald S. W. Lew denying Motion for Reconsideration of Order Granting Defendants' Motion to Dismiss for Improper Venue, entered January 27, 2006 . . . . . A-5

Excerpts from Transcript of Proceedings of Motion Hearing Held Before Judge Ronald S. W. Lew on October 24, 2005 . . . . . A-7

Order of Ninth Circuit Denying Motion for Rehearing or Rehearing En Banc, Dated January 14, 2008 . . . . . A-15

First Amended Complaint, filed August 17, 2005, without attached exhibits A-16

Notice of Motion to Dismiss or Transfer Action for Improper Venue Venue; or in the alternative to Transfer for Convenience, filed September 28, 2005 . . . . . A-63

Excerpts from Memorandum of Points and Authorities in Support of Motion to Dismiss or to Transfer Action for Improper Venue; or in the alternative to Transfer for Convenience, filed September 28, 2005 . . . . . A-66

Declaration of Tamar Pachter in Support of Motion to Dismiss or Transfer Action for Improper Venue; or in the alternative to Transfer for Convenience, filed September 28, 2005 . . . . . A-83

Declaration of Walter Barnes in Support of Motion to Dismiss or Transfer Action for Improper Venue; or in the alternative to Transfer for Convenience, filed September 28, 2005 . . . . . A-88

Notice of Motion and Motion for Reconsideration of Order granting Defendants' Motion to Dismiss for Improper Venue, filed November 18, 2005 . . . . . A-91

Notice of Appeal to Ninth Circuit, filed February 27, 2006 . . . . . A-94

Affidavit of R. Martin Palmer
in Support of Appellants'
Request for Judicial Notice,
dated August 14, 2006,
with attached exhibits A-96

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 15 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MARY SCOTT DOE, et al., No. 06-55387

Plaintiff, D. C. No. CV-05-00438-RSWL

v. MEMORANDUM*

ROBERT KLEIN, II, et al.,

Defendants.

Appeal from the United States District Court
For the Central District of California
Ronald S. W. Lew, District Judge, Presiding

Argued and Submitted October 16, 2007
Pasadena, California

Before: FERNANDEZ and WARDLAW, Circuit Judges, and COLLINS,** District Judge.

Mary Scott Doe, the National Association for the Advancement of Preborn Children (NAAPC), Suzanne and Peter Murray, Courtney and Tim Atnip, Kate Elizabeth and Steven B. Johnson, and Cara and

*This deposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.
**The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

in their official capacities and who hold positions Gregory Vest appeal the district court's dismissal of their action against a number of individuals,2 who were sued created by the passage of California Proposition 71, which created state agencies related to stem cell research. The district court determined that venue was not proper in the United States District Court for the Central District of California ("Central District"), and dismissed the action. We affirm.

We have, as we must, reviewed the question of venue de novo, 3 and have determined that the district court did not err when it dismissed this action, without prejudice, for lack of venue.4 There is neither evidence to show that any of the CIRM or Finance Committee parties reside in the Central District of California,5 nor evidence to show that any substantial events, within the meaning of venue law, took place in that district.6

AFFIRMED.

---

[2] One group of individuals consists of the president of the California Institute for Regenerative Medicine ("Cirm") and each member of the Independent Citizen's Oversight Committee ("ICOC"), the governing board of CIRM. Doe's suggestions notwithstanding, ICOC is not an entity separate from CIRM. See Cal. Family Bioethics Council V. Cal. Inst. For Regenerative Med., 147 Cal. App. 4th 1319, 1353-54, 55 Cal. Rptr. 272, 295 (207). Hoereafter, this group is collectively referred to as "CIRM parties." The other group consists of all of the members of the California Stem Cell Research and Cures Finance Committee. This group is collectively referred to as the "Finance Committee parties."

[3] See Myers v. Bennett Law Offices, 238 F.3d 1068, 1071 (9th Cir. 2001).

[4] See 28 U.S.C. § 1391(b).

[5] See id. §1391(b)(1); see also Arley v. United Pac. Ins. Co., 379 F. 2d 183, 185 n.1 (9th Cir 1967); Stacher v. United States, 258 F.2d 112, 116-19 (9th Cir. 1958).

[6] See 28 U.S.C §1391(b)(2); see also Myers, 238 F.3d at 1075-76; Dist. No. 1, Pac. Coast Dist., M.E.B.A. v. Alaska, 682 F.2d 797, 798-99 (9th Cir. 1982).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY SCOTT DOE, et al., EDCV 05-00438 RSWL(SGLx)

Plaintiff,

v.

ORDER GRANTING DEFENDENTS' MOTION TO DISMISS FOR IMPROPER VENUE

ROBERT KLEIN, II, et al.,

Defendants.

Defendant's Motion to Dismiss or Transfer Venue pursuant to 28 U.S.C. § 1406(a) and Federal Rule of Civil Procedure Rule 12(b)(3); or in the alternative, to transfer venue to the Northern District of California in the interest of justice , pursuant to 28 U.S.C. § 1404 (a). came on regularly for hearing before the Court on October 24, 2005 at 9:00 AM, before the Honorable Ronald S.W. Lew, United States District Judge.

Deputy Attorney General Tamar Pachter appeared on behalf of all Defendants and R. Martin Palmer appeared pro hac vice on behalf of all Plaintiffs.

Having considered all of the papers and argument in the matter, the Court finds and concludes as follows:

(1) Venue is not proper in the Central District of California under 28 U.S.C. § 1391 (b) (1) because none of the defendants reside in this district . Nor is venue proper under 28 U.S.C. § 1391 (b) 2, because as currently plead

no substantial part of the events or omissions giving rise to the claims alleged occurred within the Central District of California .

(2) Under 28 U.S.C. § 1406 (a), if venue is improper, the court shall dismiss the case, or transfer the case to a district where venue is proper if the interest of justice so requires. There is currently no showing justifying transfer at this time.

(3) Plaintiffs have not sufficiently established that they have standing to bring this action in order to establish that venue is proper in the Central District California.

Accordingly, Defendants' Motion to Dismiss for improper venue is GRANTED, and this case is dismissed without prejudice. Defendants' alternative motion to transfer this case to the Northern District of California is DENIED as moot.

IT IS SO ORDERED.

/S/_____
Ronald S.W. Lew
United States District

Judge

Dated: November 7, 2005

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY SCOTT DOE, et al., EDCV 05-00438 RSWL(SGLx)

Plaintiff,

ORDER DENYING RECONSIDERATION

v.

ROBERT KLEIN, II, et al.,

Defendants.

Plaintiffs' Motion for Reconsideration of the Order Granting Defendants' Motion to Dismiss for Improper Venue pursuant to Federal Rule of Civil Procedure 59(e) and Local Rule 7-18 (c) was taken under submission by this Court on December 28, 2005.

Having considered all of the papers and argument in the matter, the Court finds and concludes as follows:

Plaintiffs have failed to present new material law or fact justifying this Court to Reconsider its November 7, 2005 Order dismissing this action for Improper Venue. The Court finds that Plaintiffs have simply restated the arguments previously presented in their Opposition to Defendants' Motion to Dismiss, which this Court did in fact consider.

The Court finds that its dismissal of the action was proper. The Central District of California is not a proper venue for this action as required by 28 U.S.C. § 1391. Therefore, the Court exercised its discretion dismissing

the action pursuant to 28 U.S.C. § 1406 (a).

Therefore Plaintiffs' Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

/S/_____
Ronald S.W. Lew
United States District Judge

Dated: January 24, 2006

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

HONORABLE RONALD S.W. LEW
UNITED STATES DISTRICT JUDGE PRESIDING

MARY SCOTT DOE, et al.,

Plaintiff,

v. CV 05-438 RSWL

ROBERT KLEIN, II, et al.,

Defendants.

MOTION

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, OCTOBER 24, 2005
A.M. SESSION
LOS ANGELES, CALIFORNIA

SHERI S. KLEEGER, CSR 10340, CSR
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LOS ANGELES, CALIFORNIA;
MONDAY OCTOBER 24, 2005

A.M. SESSION

THE CLERK: Calling Item Number 5, CV 05-438, Mary Scott Doe, et al., versus Robert Klein, et al.
Counsel, state your appearances for the record.

MS. PACHTER: Good morning, Your Honor.
Deputy Attorney General Tamar Pachter on behalf of all defendants.

MR. PALMER: Yes, Your Honor.
Rudolph M. Palmer, Hagerstown, Maryland.

THE COURT: If you could wait there a moment. This is defendants' motion to dismiss or transfer action for improper venue or in the alternative the transfer for – to transfer for convenience. I read the moving papers and the oppositions.
Further argument for the movement?

MS. PACHTER: No, Your Honor. We have nothing to add, if you have no questions.

MR. PALMER: I would respectfully add something, Your Honor, if I may.
Your Honor, of course, I'm introducing myself to the Court. My contact person here in your state has been Judge William P. Clark of Paso Robles. He had referred me to local counsel, who in turn referred me to an alternate local counsel, who will be Jeanne Normandeau. She had a jury trial, I believe, in state court; so I'm introducing myself.
Your Honor, I had worked with the late President Ronald Reagan in promulgating –

THE COURT: You know what? I'm going to tell you what I want to hear. Any new responses to the motion?

MR. PALMER: Your Honor, we had filed an answer to their motion. I flew out on Friday, and I checked with my office from the airport, and my administrative assistant tells me that the answer was returned. She gave me the reason because the holes were not punched, but at any rate, I told her to FedEx – punch the holes and FedEx it to the Court. She did that Friday. I assume it would be received by your office, in the clerk's office this morning.

THE COURT: And it's too –

MR. PALMER: In addition to, the defendants then filed a response to that answer; the defense, of course, has our answer. I make the point that the Deputy Attorney General contends with respect to 28 USC 1391B2 that there is no allegation in the complaint that the voters in this Central District vetoed Proposition 71.
But Your Honor, the complaint alleges that on November the 2nd, 2004, the California Electric, Your Honor, obviously includes voting, in the Webster Dictionary, electric body of people. That makes no sense to me that no one in the Central District would have voted for it and everyone in the Northeastern District would have.

THE COURT: Mr. Palmer, you know your papers were rejected primarily due to your fault for not having paid the fees for the pro hac vice for appearing before this district.

MR. PALMER: I sent two checks for that, Your Honor.

THE COURT: Excuse me. Your have since filed your pro hoc vice fees and your paper was received. It wasn't

rejected because of your holes. It was because you weren't properly before the Court. I did scan your papers, and I do recognize you have made that argument. But is there anything else that you would like to point out to the Court beyond what may have been in your papers?

MR. PALMER: Yes, Your Honor.
The Deputy Attorney General further contends that even if it alleged in the complaint, this suit is not challenging the passage of Proposition 71. It does not seek to invalidate it in its entirely, nor does it seek to stop all stem cell research in California. It is specifically targeted at embryonic research.
The Proposition 71 offered funding for all kinds of research, not just embryonic research; thus the vote for Proposition 71 is irrelevant to this case and irrelevant for accompanying proper venue under 1391B2, end quote, deputy Attorney General's brief.
Now, the lawsuit seeks to invalidate Proposition 71 in large part, including portions of Article 35 of the California Constitution that was added by Proposition 71
—

THE COURT: Mr. Palmer, I'm going to cut you short because of the very nature of what you present. I would really love to tackle to this case. I think it's replete with a lot of issues that are quite interesting, and I would love to do it.

MR. PALMER: We're happy to hear that.

THE COURT: However, you have a problem, you know. I am going to make ruling now with this Court finding that, you know, it's – this is not the proper venue for the action that is required by 28 USC 1391, as presently filed in this Court in the reviewing of this Court; therefore, this Court has discretion to, either under Section 1406, dismiss or

transfer the action if the interest of justice so requires. I am going to dismiss this case at this point in time, finding that it is the most appropriate way to deal with it. But I will dismiss it without prejudice, and the alternative request made by the movants is denied as moot.
So if you find a better basis to get the matter to this Court, I will hear it. But at this juncture this is clearly my ruling that it's probably premature, and the venue isn't here. And if at anther time a better complaint is brought before the Court, if filed in this district, I will hear it. If not, it should probably be in the Northern or Eastern District of California.
I'm going to ask that the defense, movants, prepare an order with respect to this ruling. All right?

MR. PALMER: So that I understand, Your Honor, are your indicating that it would be proper to refile here because we are feeling that –

THE COURT: You know, lawyers – the lawyers are crafty with their presentation and their complaint, but we have a lot of issues here that may make it inappropriate for this Court, but I cannot say clearly that it will never be inappropriate, depending on what I see in the complaint. All right?

MR. PALMER: What would make it appropriate?

THE COURT: I wish I was an advocate again. And I charge great fees for advice, but –

MR. PALMER: Well, I thought conflicts of interest.

THE COURT: First of all, let's make it timely, at least until the bond is issued. I don't know whether or not I have
— you know where the plaintiff is at right now. The

complaint has nothing to do with that. I mean, you are in the Central District of California. If you want the Central District to be a proper venue, you've got to give me all the bases upon which to make it the proper venue.
But anyway with that said, which is enough, I think you should prepare the order, and I'll sign it.

MR. PALMER: Thank you, Your Honor.
THE COURT: Thank you very much.

MS. PACHTER: Thank you, Your Honor.

THE COURT: Thank you.

CERTIFICATE OF REPORTER

COUNTY OF LOS ANGELES

STATE OF CALIFORNIA

I, Sheri S. Kleeger, Official Court Reporter, in and for United States District Court for the Central District of California, do hereby certify that pursuant to section 753, title 28, United States Cod, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the judicial conference of the United States.

Date: June 5, 2006

/S/
Sheri S. Kleeger, CSR
Federal Official Court Reporter

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARY SCOTT DOE, et al., No. 06-55387

Plaintiff, D. C. No. CV-05-00438-RSWL

v. ORDER DENYING PETITION FOR REHEARING AND FOR REHEARING EN BANC

ROBERT KLEIN, II, et al.,

Defendants.

Before: FERNANDEZ and WARDLAW, Circuit Judges, and COLLINS,* District Judge.

The panel has unanimously voted to deny Appellants' petition for rehearing. The petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing and the petition for rehearing en banc are DENIED.

---

*The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MARY SCOTT DOE, a human embryo "born" in the United States (and subsequently frozen in which state of cryo-preservation her life is presently suspended), individually and on behalf of all other frozen human embryos similarly situated; and the NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF PREBORN CHILDREN (NAAPC), PETER MURRAY and SUZANNE MURRAY, COURTNEY ATNIP and TIM ATNIP, STEVEN B. JOHNSON and KATE ELIZABETH JOHNSON, and CARA VEST and GREGORY VEST,

Plaintiffs,

v.

ROBERT KLEIN, II, Chairman; EDWARD PENHOET, Ph.D., Vice Chairman; DAVID BALTIMORE, Ph.D.; ROBERT BIRGENEAU, Ph.D.; KEITH L. BLACK, M.D.; SUSAN V. BRYANT, Ph.D.; MICHAEL A. FRIEDMAN, M.D.; MICHAEL GOLDBERG; BRIAN E. HENDERSON, M.D.; EDWARD W. HOLMES, M.D.; DAVID A. KESSLER, M.D.; SHERRY LANSING; GERALD S. LEVEY, M.D.; TED W. LOVE, M.D.; RICHARD A. MURPHY, Ph.D.; TINA S. NOVA, Ph.D.; PHILLIP A. PIZZO, M.D.; CLAIRE POMEROY, M.D.; PHYLLIS

PRECIADO, M.D.; FRANCISCO J. PRIETO, M.D.; JOHN C. REED, M.D.; JOAN SAMUELSON; DAVID SERRANO SEWELL; JEFF SHEEHY; JONATHAN SHESTACK; OSWALD STEWARD, Ph.D.; LEON J. THAL, M.D.; GAYLE WILSON; JANET S. WRIGHT, M.D., in their official capacities as members of the INDEPENDENT CITIZEN'S OVERSIGHT COMMITTEE, the governing body for the CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE, an agency of the California state government; and ZACH W. HALL, in his official capacity as the interim president of the CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE; and PHILLIP ANGELIDES, State Treasurer, STEVE WESTLY, State Controller, TOM CAMPBELL, Director of Finance, ROBERT
KLEIN II, MICHAEL A. FRIEDMAN, M.D., and TED W. LOVE, M.D., in their official capacities as members of the CALIFORNIA STEM CELL RESEARCH AND CURES FINANCE COMMITTEE,

Defendants,

Plaintiffs, by way of complaint against the Defendants, allege the following:

NATURE OF ACTION

1. This is an action for declaratory, injunctive and other necessary and appropriate relief, brought under the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., seeking (a) the entry of a declaratory judgment that (i) Plaintiff Mary Scott Doe, a human embryo and a developing human life, is a person "born" in, and a citizen of, the United States of America within the meaning of the Fourteenth Amendment and a "party" within the meaning of the Thirteenth Amendment, (ii) is entitled to due process and the equal protection of the laws and to be free from slavery and involuntary servitude, as guaranteed by the Fourteenth and Thirteenth Amendments, and (iii) that the Defendants' proposed and imminent actions of funding and otherwise facilitating, assisting or encouraging human embryo stem cell experimentation or somatic cell nuclear transfer (the methodology of cloning), which will result in her and other human embryos' certain and sudden death and destruction, will violate the due process and equal protection guarantees of the Fourteenth Amendment, and further will violate the Thirteenth Amendment's prohibition against slavery and involuntary servitude; (b) the entry of an injunction directing and ordering the Defendants to cease and desist any and all plans to fund or otherwise facilitate, assist or encourage the undertaking of any human embryo stem cell experimentation or any somatic cell nuclear transfer in violation of the Plaintiff Mary Scott Doe's and the other human embryos' federal constitutional rights; (c) the entry of a declaratory judgment that the Defendants' proposed and imminent actions of funding human embryo stem cell experimentation are preempted by federal law, specifically by Section 510 of Public Law 108-199, 118 Stat. 3, 277 (January 23, 2004); (d) the entry of a declaratory

judgment that (i) Mary Scott Doe, a human embryo and a developing human life, is a member of the "people" having "by nature . . . inalienable rights" for purposes of Cal.Const. Art. I, Section 1, (ii) is a "person" entitled to due process and the equal protection of the laws as guaranteed by Cal.Const. Art. I, Section 7(a), (iii) is a party entitled to be free from slavery and involuntary servitude as guaranteed by Cal.Const. Art. I, Section 6, and (iv) that the Defendants' proposed and imminent actions of funding and otherwise facilitating, assisting or encouraging human embryo stem cell experimentation or somatic cell nuclear transfer, which will result in her and other human embryos' certain and sudden death and destruction, will deny Mary Scott Doe's and other human embryos' inalienable rights in violation of Cal.Const. Art. I, Sections 1, will deprive Mary Scott Doe and other human embryos' rights to due process and the equal protection of the laws in violation of Cal. Const. Art. I, §7(a), and will subject Mary Scott Doe and other human embryos to involuntary servitude and slavery in violation of Cal. Const. Art. I, § 6; and (e) the entry of an injunction directing and ordering the Defendants to cease and desist any and all plans to fund, to finance through the issuance of bonds or to otherwise facilitate, assist or encourage the undertaking of any human embryo stem cell experimentation or any somatic cell nuclear transfer in violation of the Plaintiff Mary Scott Doe's and the other human embryos' state constitutional rights.

JURISDICTION AND VENUE

2. Jurisdiction over this action is conferred by the federal question jurisdiction statute, 28 U.S.C. § 1331, and by the supplemental jurisdiction statute, 28 U.S.C. § 1367.

3. Venue is properly laid in this Court by virtue of 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff Mary Scott Doe is a human embryo "born," i.e., produced or brought into life, in one of the states of the United States, including the state of California, by the new science of *in vitro* (Latin for "in glass") fertilization, whereby the process of fertilization, which produces or brings her into life, takes place not in a tube of flesh (the fallopian tube) but in a tube of glass (the test tube), after which life for her has been presently suspended by the freezing of Mary Doe in liquid nitrogen (cryo-preservation) and from which she may be thawed and gently returned to the warmth of life and placed for human embryo adoption so that she may fulfill her destiny as a fully developed human life or, in the alternative, she may be coveted and enslaved for human embryo vivisection and experimentation, resulting in her certain death and destruction. She is "born" in the United States, as that term is used in the Fourteenth Amendment to the United States Constitution, specifically as the word "born" is defined in Webster's Dictionary, Complete and Unabridged, of 1857, the definition contemporaneous with the passage of the Fourteenth Amendment in 1868, a copy of which dictionary definition is attached hereto as Exhibit "A".

5. Plaintiff National Association for the Advancement of Preborn Children is an unincorporated association and organization dedicated to advocacy for the equal humanity and personhood of preborn children, including "children in vitro", with offices located at 21 Summit Avenue, Hagerstown, Maryland, www.naapc.net

6. Plaintiffs Peter Murray and Suzanne Murray, husband and wife, are residents of Riverside, California, who have a baby daughter, Mary, adopted as a human embryo, and who are actively considering adopting another human embryo.

7. Plaintiffs Tim Atnip and Courtney Atnip, husband and wife, are residents of Riverside, California,

who have a baby son, Carter, adopted as a human embryo, and who are actively considering adopting another human embryo.

8. Plaintiffs Steven B. Johnson and Kate Elizabeth Johnson, husband and wife, are residents of 243 Pennsylvania Avenue, Reading, Pennsylvania 19606, who have a baby daughter, Zara Elizabeth, adopted as a human embryo, and who are actively considering adopting another human embryo.

9. Plaintiffs Gregory and Cara Best, husband and wife, are residents of 16644 Mosswood Drive, Hamilton, Virginia 20158, who have a son, Jonah David, and a daughter, Gabrielle Annmarie, genetics siblings who were adopted as human embryos, and who are actively considering adopting another human embryo.

10. Defendant Robert Klein, II, on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member and the Chairman of the 29-member, Independent Citizens' Oversight Committee (hereinafter the "Committee" or the "ICOC"), which is the governing body for the California Institute for Regenerative Medicine (hereinafter "CIRM"). CIRM and its governing body, the ICOC, were created by the California Stem Cell Research and Cures Act, Cal. Health and Safety Code §§ 125290.10 et seq., which state statute was enacted on November 2, 2004, through the passage by the California electorate of the initiative measure known as Proposition 71. Mr. Klein is also being sued in his official capacity as duly appointed and/or elected member of California Cell Research and Cures Finance Committee (hereinafter the "Finance Committee"). The Finance Committee was created by the California Stem Cell Research and Cures Bond Act of 2004, Cal. Health and Safety Code §§ 125291.10 et seq., which statute was also enacted on November 2, 2004, through the passage by the California electorate of the initiative measure known as Proposition

71.

11. Defendant Edward Penhoet, Ph.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

12. Defendant David Baltimore, Ph.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

13. Defendant Robert Birgeneau, Ph.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

14. Defendant Keith L. Black, M.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

15. Defendant Susan V. Bryant, Ph.D., on information and belief, is a resident of the state of California and is being sued in her official capacity as a duly appointed and/or elected member of the ICOC.

16. Defendant Michael A. Friedman, M.D., on information and belief, is a resident of the .state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

17. Defendant Michael Goldberg, on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

18. Defendant Brian E. Henderson, M.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

19. Defendant Edward W. Holmes, M.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

20. Defendant David A. Kessler, M.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

21. Defendant Sherry Lansing, on information and belief, is a resident of the state of California and is being sued in her official capacity as a duly appointed and/or elected member of the ICOC.

22. Defendant Gerald S. Levey, M.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

23. Defendant Ted W. Love, M.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

24. Defendant Richard A. Murphy, Ph.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

25. Defendant Tina S. Nova, Ph.D., on information and belief, is a resident of the state of California and is being sued in her official capacity as a duly appointed and/or elected member of the ICOC.

26. Defendant Phillip A. Pizzo, M.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

27. Defendant Claire Pomeroy, M.D., on information and belief, is a resident of the state of California and is being sued in her official capacity as a duly appointed and/or elected member of the ICOC.

28. Defendant Phyllis Preciado, M.D., on information and belief, is a resident of the state of California and is being sued in her official capacity as a duly appointed and/or elected member of the ICOC.

29. Defendant Francisco J. Prieto, M.D., on

information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

30. Defendant John C. Reed, M.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

31. Defendant Joan Samuelson, on information and belief, is a resident of the state of California and is being sued in her official capacity as a duly appointed and/or elected member of the ICOC.

32. Defendant David Serrano Sewell, on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

33. Defendant Jeff Sheehy, on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

34. Defendant Jonathan Shestack, on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

35. Defendant Oswald Steward, Ph.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

36. Defendant Leon J. Thal, M.D., on information and belief, is a resident of the state of California and is being sued in his official capacity as a duly appointed and/or elected member of the ICOC.

37. Defendant Gayle Wilson, on information and belief, is a resident of the state of California and is being sued in her official capacity as a duly appointed and/or elected member of the ICOC.

38. Janet S. Wright, M.D., on information and belief, is a resident of the state of California and is being

sued in his official capacity as a duly appointed and/or elected member of the ICOC.

39. Defendant Zach W. Hall, on information and belief, is a resident of the state of California and is being sued in his official capacity as the duly appointed interim president of the California Institute of Regenerative Medicine ("CIRM"), an institution and agency of the government of the State of California created by Article XXXV of the California Constitution, which Article was added to the California Constitution by an amendment adopted on November 2, 2004, through the passage by the California electorate of the initiative measure known as Proposition 71.

40. Defendant Phillip Angelides, on information and belief, is a resident of the state of California, is the Treasurer of the State of California, and is being sued in his official capacity as a duly appointed and/or elected member of the Finance Committee.

41. Defendant Steve Westly, on information and belief, is a resident of the state of California, is the State Controller for the State of California, and is being sued in his official capacity as a duly appointed and/or elected member of the Finance Committee.

42. Defendant Tom Campbell, on information and belief, is a resident of the state of California, is the Director of Finance for the State of California, and is being sued in his official capacity as a duly appointed and/or elected member of the Finance Committee.

FACTUAL INFORMATION REGARDING THE EQUAL HUMANITY AND PERSONHOOD OF MARY SCOTT DOE

43. Mary Scott Doe is a fertilized oocyte or human embryo "produced or brought into life" by the new science of *in vitro* (Latin for "in glass") fertilization, i.e., the

combining of the egg of the mother and the sperm of the father, whereby the process of fertilization, which produces or brings her into life, takes place not in a tube of flesh (the fallopian tube) but in a tube of glass (the test tube); after which, life for her has been suspended by the freezing of Mary Scott Doe in liquid nitrogen (cryo-preservation).

44. Based on a 2003 report issued by the American Society of Reproductive Medicine (ASRM), in association with The Society for Assisted Reproductive Technology (SART) and the Rand Corporation, it has been estimated that there are more than 400,000 human embryos currently being held in cryo-banks, much like frozen orphanages.

45. The advance of technology and modern science has enabled fertilization of human beings to be accomplished *in vitro*.

46. The advance of technology and modern science has further enabled time for the human embryo to be suspended by freezing in liquid nitrogen for extended periods of time—including years.

47. Subsequently, the continuum of development of the embryo may be resumed and continued by gently returning the human embryo to the warmth of life, upon which life for her resumes and she is allowed to fulfill her destiny.

48. These procedures, when properly done, do not violate the integrity and continuity of the story of life, as evidenced by the successful births of many who have been preserved (frozen) as embryos, and they allow Mary Scott Doe and other human embryos *in vitro* to be returned to the warmth of life, after storage for months or even years in a frozen state, and to be implanted in the womb of an adopting mother as a "child *in vitro*" (See sworn testimony of World Dean of Geneticists and ruling of Judge Willliam Dale Young in "Tennessee Frozen Human Embryo Case," Exhibit B).

49. Although not every embryo that is thawed in preparation for implantation will survive the thawing process, many have and will.

50. The modern science of *in vitro* fertilization has given rise to the adoption of "children *in vitro*" as human embryos, and Mary Scott Doe, on behalf of herself as a frozen human embryo and all others similarly situated, prays for an injunction against her use for California state-funded, human embryo stem cell experimentation, or for California state-funded, somatic cell nuclear transfer, which would result in her and other human embryos' certain death and destruction, so that she and the other human embryos she seeks to represent might, in place of death, be given the opportunity of adoption as a "child *in vitro*" so that she and they might fulfill their destiny as human beings (B-29).

51. One such human embryo adoption program is the Snowflakes human embryo program of Nightlight Christian Adoptions of Fullerton, California.

52. The Snowflakes program, which began in 1997, has resulted in the labor and delivery of seventy-four (74) children, and another fifteen (15) babies are due through September 2005. *See* Affidavit of Ronald L. Stoddart, ¶ 9 at p. 3, attached hereto as Exhibit "C." (81 children as of meeting of President Bush with Snowflakes embryo babies May 24, 2005, East Room of the White House.)

53. Although frozen embryo adoption programs are still in their infancy, the public response to these programs has validated several important assumptions:

a. Genetic parents with frozen human embryos ("children *in* vitro")(B-43), given the choice of having their embryos destroyed, donated for experimentation, or placed for adoption, will overwhelmingly choose adoption or leaving the embryos in cryo-banks. It is very rare for families to choose destruction or experimentation. (Those seeking to perform human embryo experimentation use the euphemistic term "research") ("human embryo

research").

b. There is a growing number of potential adopting parents who will adopt and carry human embryos (children *in* vitro) to term.

c. The potential for finding families to adopt every human embryo (child *in vitro*) available for adoption is more than great; it borders on a certainty. The cost of such adoptions is typically less than more traditional adoptions, and it carries far fewer risks of losing a child associated with children born to birthmothers and then placed for adoption.

d. The ability of an adopting mother to carry and give birth to her own adopted child *in vitro*, making the child her birth child and adopted child, is extremely appealing to the majority of potential adopting parents. The medical efficacy of the procedures involved have been proven.

54. The human embryo is a living entity, a human being, a human individual, and a person, all one and inseparable. *See* Affidavit of Professor C. Ward Kischer, attached hereto as Exhibit "D."

55. As has been pointed out by human embryologist, C. Ward Kischer, Ph.D., in his article, "When Does Human Life Begin? The Final Answer," published in The Linacre Quarterly, 2003.V.70: 326-339, a copy of which is attached hereto as Exhibit "E":

Virtually every human embryologist and every major textbook of Human Embryology, states that *fertilization marks the beginning of the life of the new individual human being.*

The reason why this is true is the following:

from the moment when the sperm makes contact with the oocyte [egg], under conditions we have come to understand and describe as *normal*, all subsequent development to birth of a living newborn is a *fait*

accompli. That is to say, after that initial contact of spermatozoon and oocyte there is no subsequent moment or stage that is held in arbitration or abeyance by the mother, or the embryo or fetus. Nor is a second contribution, a signal or trigger, needed from the male in order to continue and complete development to birth. Human development is a ***continuum*** in which so-called stages overlap and blend one into another. Indeed, all of life is contained within a time ***continuum.*** Thus, the beginning of a new life is exacted by the beginning of fertilization, the reproductive event which is the *essence* of life.

Exhibit "E" at page 3 (italics and emphasis in original.)

56. Everything necessary to build Mary Scott Doe and the other human embryos *in vitro* that she seeks to represent, is present, sufficient and complete, from the very beginning, i.e., at the moment of fertilization. Nothing is added. Everything necessary to build the human brain, capable of going to the moon and putting foot on the moon, is locked in at the moment of fertilization, the reproductive event which is the beginning of a new human life (B-17).

57. Such a realization that everything necessary and complete to build and become the new human being we will later call "Mary" or "David" who would fit on the tip of a needle is too wonderful for man. It is high; he cannot attain it.

58. Science now proves to man that he is fearfully and wonderfully made; the creation of God (the same God in Whom America places her trust on the back of her money—our national motto), and this same God is referenced in the California Constitution, which provides in pertinent part:

"We, the People of the State of California, grateful to *Almighty God* for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution."

Cal.Const., Preamble (emphasis added).

59. Mary Scott Doe's forefathers truly stated in the Declaration of Independence, the charter of her nation, that " . . . all men are *created* [by God] equal and endowed *by their creator* with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness." (Emphasis added.)

60. Mary Scott Doe and the other human embryos she seeks to represent, by virtue of their equal creation, claim their right to equal life, liberty, and the pursuit of happiness as part of our Nation's "Posterity," as referenced in the Preamble of the United States Constitution ("We the People of the United States, in Order to form a more perfect Union, establish Justice...and secure the Blessings of Liberty to ourselves and our POSTERITY, do ordain and establish this Constitution for the United States of America").

61. Included within Mary Scott Doe's (and every human embryo's) right to life, liberty, and the pursuit of happiness—which rights are vouchsafed by the due process and equal protection guarantees of both the Fourteenth Amendment and Cal. Const. Art. I, § 7(a), by the freedom from slavery and involuntary servitude guaranteed by the Thirteenth Amendment and Cal. Const. Art. I, § 6, and by the inalienable rights acknowledged and/or guaranteed by Cal.Const. Art. I, § 1 and the Declaration of Independence–is her right to the opportunity to be adopted by a married couple wishing to adopt a frozen human embryo (a "child *in vitro*")(E-43) and thus to be removed from the deep freeze of cryo-preservation and returned to the warmth of life and implanted in an adopting mother's womb (E-43).

62. That upon adoption and implantation in an adopting mother's womb, Mary Scott Doe may fulfill her destiny by beginning a nine month journey as a "child *in utero*" within the "innerspace" of the vaulted temple of the womb with its filtered reddish light (curiously much like the filtered light of a stained glass cathedral that man

later builds as a house of worship to his Creator, reminding him, as it were, of the original "temple of the womb" in which his life began and in which he danced and turned somersaults full of gaiety and grace).

63. Mary Scott Doe's entire substance is seen and known to her Creator when she is yet unformed, and, in her Creator's book, all her members are written, which in continuance are fashioned, when as yet there are none of them.

64. The Court may take judicial notice that, at the beginning of the twenty-first century, mothers carry to term their own daughter's child, such that the grandmother's temple of the womb offers temporary shelter to her granddaughter conceived by that grandmother's daughter.

65. The Court may likewise take judicial notice of the fact that there is no medical, scientific or legal requirement that a frozen human embryo be returned to the womb of her genetic mother in order to continue to grow into a fully developed human life, but rather such a human embryo may be implanted and brought to term in the womb of an adopting mother.

66. The Court may also take judicial notice that the adoption of frozen human embryos is by now a common occurrence, and that entire organizations have come into being and now exist to bring together frozen human embryos and prospective adoptive parents, including the Snowflakes human embryo program located in Fullerton, California.

67. It is neither fair nor truthful to regard Mary Scott Doe, or any other human embryo *in vitro*, as a human being only if she is adopted and implanted in the womb of an adopting mother and otherwise to label her just a "mass of cells", "biological material", or a "surplus product" if she is made the object of human embryo stem cell experimentation.

68. Complete and sufficient within Mary Scott Doe

is the ability, upon adoption and implantation in an adopting mother's womb, to build herself like a little astronaut in the "innerspace" of the temple of the womb. Mary Scott Doe hooks onto the wall of the adopting mother's womb in order to receive nutrients and oxygen and builds and extends her own little astronaut lifeline (the placenta) through which she will continue to receive nutrients and oxygen with which to build her body, which will be ready for "labor and delivery" in approximately nine months.

69. For the purpose of building her body, Mary Scott Doe also builds a little bubble spacesuit around herself for her journey in "innerspace" until she passes a chemical message over her placenta back to the body of the "mothership" (the adopting mother) signaling and initiating in her adopting mother's body the contractions of labor which will "deliver" Mary Scott Doe from the "innerspace" of the temple of the womb to the "outerspace" of the sunshine of the smiling faces of her fellow humanity.

70. Mary Scott Doe is a "being", and being human, she is a human being. She is "person" and not "property" because she is the only 'property' which has the 'property' of building herself, even the human brain capable of going to the moon and putting foot on the moon. She is a "person" for purposes of both the Fourteenth Amendment and Cal.Const. Art. I, § 7(a), and a member of "the people" for purposes of Cal.Const. Art. I, § 1 (E-29 & E-43).

71. As a developing human being, Mary Scott Doe is entitled to the equal respect of the high Constitutional ideals and protection of both the Constitution of the State of California and the Constitution of the United States of America, of which California is a part.

72. To deny such equal protection to Mary Scott Doe and to the other human embryos she seeks to represent is to deny the protection of the California Constitution and of the United States Constitution to all

of the "people" of California and to all "persons" in the United States.

73. If one acknowledges that the builder of Mary Scott Doe's body is, in fact, God, the Creator, referenced and reverentially acknowledged in both the Preamble to the Constitution of the State of California and the Declaration of Independence, Mary Scott Doe is entitled to reverential respect as a developing human life and as a creation of God.

74. The decision of the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), is wholly inapplicable and inapposite to this matter because, unlike in the case of a preborn child *in utero*, there is no countervailing personhood of the "mother" whose "right to choose" allegedly overshadows the personhood and constitutional rights of Mary Scott Doe, a human embryo *in vitro*. This is not an abortion case. Mary Scott Doe is separate and apart from her genetic mother and is seeking to have her own rights protected by enjoining the actions, not of her genetic mother, but of state government officials and entities who seek to fund experimentation that inevitably will cause her death and destruction.

FACTUAL BACKGROUND OF THE CASE

75. On November 2, 2004, the California electorate passed an initiative measure known as Proposition 71.

76. As a result of the passage of Proposition 71, Article XXXV was added to the California Constitution, establishing, as an agency of the California state government, the California Institute of Regenerative Medicine (hereinafter "CIRM"), and providing that CIRM "shall have" the purpose, among others, "[t]o make grants and loans for stem cell research." *See* Cal.Const. Art. XXXV, §§ 2(a), 6 (those wishing to experiment upon human embryos without their consent present it as "research"—a more acceptable term).

77. Section 5 of Article XXXV further establishes

"a right to conduct stem cell research," (human embryo stem cell—the words "human embryo" are purposely deleted so as to make the connection with "adult" stem cells; adult stem cell experimentation does not involve the death of the human being from which they are taken), which state constitutional right is specifically defined as including "research involving adult stem cells, cord blood stem cells, *pluripotent stem cells*, and/or progenitor cells." Cal.Const. Art. XXXV, § 5 (emphasis added).

78. Section 5 of Article XXXV defines "pluripotent [embryonic] stem cells" as "cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types" and further states that such embryonic stem cells "may be derived from somatic cell nuclear transfer *or from surplus products (*human embryo/"children *in vitro*" are labeled "surplus products") *of in vitro fertilization treatments when such products are donated* (by whose authority do we donate small human beings into slavery and human experimentation?) *under appropriate informed consent procedures*.(by whose authority may a mother and father consent to donate their child or children into slavery?)" Cal.Const. Art. XXXV, § 5 (emphasis added).

79. Article XXXV further provides that CIRM "*may utilize state issued tax-exempt and taxable bonds to fund* its operations, *medical and scientific research*, including therapy development through clinical trials, and facilities." Cal.Const. Art. XXXV, § 6 (emphasis added). (By what authority are state bonds issued to begin that which is in derogation of the Constitution of the State of California and the United States Constitution prohibiting slavery?)

80. As a further result of the passage of Proposition 71 by the California electorate, the California Stem Cell Research and Cures Act, Cal. Health & Safety Code § 125290.10 et seq., [hereinafter the "Stem Cell Act"] was enacted, creating the ICOC as the 29-member governing

body of CIRM and vesting the ICOC "with full power, authority, and jurisdiction over the institute." Cal. Health & Safety Code § 125290.15.

81. The ICOC is charged by the Stem Cell Act with establishing a variety of "standards," including standards for the following:

(a) Informed Consent, i.e., standards "for obtaining the informed consent of research donors [, who are defined by the Stem Cell Act as humans who donate "biological materials" for research purposes after full disclosure and consent, Cal. Health & Safety Code § 125292.10(t),], patients, or participants, which initially shall be generally based on the standards in place on January 1, 2003, for all research funded by the National Institutes of Health, with modifications to adapt to the mission and objectives of the institute," Cal. Health & Safety Code § 125290.35(b)(1); (but informed consent of the very tiny human embryo without a voice, SAVE THIS HONORABLE COURT, is conveniently omitted although it is an unquestioned principle of medical ethics not to experiment upon a human being without that exact human being's consent);

(b) Controls on Research Involving Humans, i.e., standards "for the review of research involving human subjects which initially shall be generally based on the Institutional Review Board standards promulgated by the National Institutes of Health and in effect on January 1, 2003, with modifications to adapt to the mission and objectives of the institute," Cal. Health & Safety Code § 125290.35(b)(2); (NIH first began to press for human embryo experimentation under the Carter Administration and have established their own "standards" allowing same, which human embryo experimentation has been rejected by the administrations of President Carter, President Reagan (indeed, he signed the Emancipation Proclamation of Preborn Children protecting human beings from conception/fertilization), President Bush the Elder and President George W. Bush. Only the Clinton

Administration endorsed human embryo experimentation and attempted to begin it) and
(c) Time Limits for Obtaining Cells, i.e., standards "setting a limit on the time during which cells may be extracted from blastocysts (another term used to depersonalize a stage of the new human being about to be subjected to experimentation), which shall initially be 8 to 12 days after cell division begins, not counting any time during which the blastocysts and/or cells have been stored frozen," Cal. Health & Safety Code § 125290.35(b)(6).

82. The ICOC is also empowered by the Stem Cell Act to "[m]ake final decisions on research standards and grant awards in California." Cal. Health & Safety Code § 125290.40(c).

83. In addition, the Stem Cell Act provides that the ICOC, "[n]otwithstanding the [California] Administrative Procedure Act (APA), and in order to facilitate the immediate commencement of research covered by [the Stem Cell Act], . . . may adopt interim regulations without compliance with the procedures set forth in the APA," such interim regulations to remain in effect for 270 days "unless earlier superseded by regulations adopted pursuant to the APA." Cal. Health & Safety Code § 125290.40(k).

84. CIRM is directed by the Stem Cell Act to create a 23-member, "Scientific and Medical Research Funding Working Group" within 30 days after the election and appointment of the initial ICOC members, which working group is empowered and directed to, among other things, (a) "[r]ecommend to the ICOC interim and final criteria, standards, and requirements for considering funding applications and for awarding research grants and loans," Cal. Health & Safety Code § 125290.60(b)(1); and
(b) "[r]ecommend its first grant awards within 60 days of the issuance of the interim standards," Cal. Health & Safety Code § 125290.60(b)(7).

85. The term "interim standards" as that term is

used in the Stem Cell Act is defined as meaning "temporary standards that perform the same function as 'emergency regulations' under the [California] Administrative Procedure Act ([California] Government Code, Title 2, Division 3, Part 1, Chapter 4.5, Sections 11371 et seq.) except that in order to provide greater opportunity for public comment on the permanent regulations, remain in force for 270 days rather than 180 days." Cal. Health & Safety Code § 125292.10(n).

86. On information and belief, CIRM, acting through its governing body the ICOC, has begun the process of obtaining a loan from the California state treasury in order to hire staff and to begin operating, and the agency expects to award its first grants for stem cell experimentation by as early as May 2005, which California state-funded, stem cell research and experimentation will inevitably result in the destruction of Mary Scott Doe and of many of the other human embryos she represents.

87. Contrary to the Stem Cell Act's assertion that "[t]hese excess cells from *in vitro* fertilization treatments would otherwise be intended to be discarded if not utilized for medical research," Cal. Health & Safety Code § 125292.10(q), the adoption of frozen human embryos is by now a common occurrence, and entire organizations have come into being and now exist to bring together frozen human embryos and prospective adoptive parents, including the Snowflakes program in Fullerton, California, part of the Christian Adoption and Family Services of California.

88. Mary Scott Doe, as a human embryo, has been produced or brought into life from the moment of her conception or fertilization. She is not merely "excess cells," or a "surplus product," or some "biological material," but a human being, that is both living and genetically unique, as well as capable of developing into an adult.

89. Derivation of stem cells from human embryos

terminates and destroys them, and, thus, the experimenters, whose experiments the Defendants propose to fund through grants of state monies, must inevitably kill and destroy human embryos.

90. Mary Scott Doe, and the other human embryos *in vitro* that she seeks to represent, are the smallest and most immature and most utterly incapacitated of human beings, and they are incapable of giving an informed consent to their use in research and experimental procedures.

91. Neither is the genetic mother nor the genetic father of a human embryo capable of giving a valid informed consent to the use of such a developing human life in experimental procedures that will result in the human embryo's certain destruction, anymore than the genetic mother or father of a child could give a valid, informed consent to the child being subjected to human slavery and
experimentation.

92. The utilitarian thinking underlying Defendants' proposed government funding of human embryo stem cell experimentation is what led to the Nazi experimentation on concentration camp prisoners during World War II (and, of all the experiments performed upon human beings by the Nazi government, not a single advance for medical science resulted). The same utilitarian thinking led the United States Government to conduct radiation experiments on unwitting human subjects during the Cold War.

93. Despite this recent history, Defendants stand poised to approve and release research grants of state monies to experimenters who will use such government grants to begin human embryo stem cell experimentation. This is the same forced experimentation on human subjects that occurred over sixty (60) years ago, cleaned up, sanitized, and miniaturized. Human embryo experimentation is worse than what happened sixty years ago

because it is against all humanity.

94. All human beings, even as human embryos, have an inalienable right to life received immediately from God and not from their parents or some society or human authority. *Thus, there is no man, no science, no human authority, no medical, social, eugenic, economic, moral indication that could produce or give a valid statutory, constitutional, legal, or jurisdicial title to dispose directly or deliberately of an innocent human life.*

COUNT ONE

DECLARATORY JUDGMENT AND INJUNCTION: VIOLATION OF DUE PROCESS

95. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 91 of the Complaint, as if fully set forth herein at length.

96. Mary Scott Doe, a human being and "child *in vitro*", and the other human embryos she seeks to represent, are

(a) each a human embryo *in vitro*, a living entity, a developing human life, a human being, a human individual, and a person; and are

(b) each a member of the "people" of California under Cal.Const. Art. I, § 1 entitled to the inalienable rights guaranteed thereunder, and, thus, a "human being" and a "person" as recognized under California law,

and, thus, for either or both of these reasons, they are each a "person" entitled to the protection of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

96. The personhood of Mary Scott Doe and the other human embryos she represents is supported by the fact that, on January 18, 1988, President Ronald Reagan, who was also a two-term governor of the State of California, issued a Presidential Proclamation that has become known as the "Emancipation Proclamation of Preborn Children" (and simultaneously therewith proclaimed January 17, 1988 as a national Sanctity of

Human Life Day), which Presidential Proclamation provides as follows:

> "NOW THEREFORE, I, RONALD REAGAN, President of the United States, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim and declare *the unalienable personhood of every American, from the moment of conception until natural death*, and I do proclaim, ordain, and declare that I will take care that the Constitution and laws of the United States are faithfully executed for the protection of America's unborn children. Upon this act, sincerely believed to be an act of justice, warranted by the Constitution, I invoke the considerate judgment of mankind and the gracious favor of Almighty God. I also proclaim Sunday, January 17, 1988, as a national Sanctity of Human Life Day. I call upon the citizens of this blessed land to gather on that day in their homes and places of worship to give thanks for the gift of life they enjoy and to reaffirm their commitment to the dignity of every human being and sanctity of every human life." (Emphasis added.)

97. Mary Scott Doe, a human embryo, from the time of her fertilization and conception, therefore possessed and possesses "unalienable personhood", as well as inalienable rights.

98. As all human lives began and continue to begin as a human embryo, to treat Mary Scott Doe and the other human embryos that she represents as "biological material" or "excess cells" or "surplus products" to be experimented upon, and not as "persons" and "human beings" with unalienable personhood and inalienable rights, is to begin a denatured biology and a very dim future for mankind.

99. By proposing to fund human embryo stem cell

experimentation, which experimentation necessarily requires the destruction of human embryos in order to obtain the stem cell lines required for the conduct of such experimentation, Defendants are imminently threatening to deprive Mary Scott Doe and the other human embryos she represents of their lives and liberty, including the opportunity to be adopted and brought to term by an adoptive mother, without substantive or procedural due process in violation of the Fourteenth Amendment.

100. To the extent that the California Stem Cell Act, Cal. Health & Safety Code § 125290.10 et seq., authorizes Defendants to adopt interim and final research standards for, and to approve and issue grants of state monies to fund, human embryo stem cell experimentation, such Act threatens to deprive Mary Scott Doe and the other human embryos she represents of their lives and liberty, including the opportunity to be adopted and brought to term by an adoptive mother, without substantive or procedural due process in violation of the Fourteenth Amendment.

101. To the extent that Article XXXV, Section 5 of the California Constitution establishes a state constitutional "right" to conduct state-funded, human embryo stem cell research, which "right" expressly authorizes stem cells to be "derived . . . from surplus products of *in vitro* fertilization treatments," i.e., from human embryos, thereby resulting in their immediate destruction, Article XXXV, Section 5 threatens to deprive Mary Scott Doe and the other human embryos she represents of their lives and liberty, including the opportunity to be adopted and brought to term by an adoptive mother, without substantive or procedural due process in violation of the Fourteenth Amendment.

102. To the extent that the Article XXXV and the Stem Cell Act authorize genetic parents, guardians or other "research donors" to donate human embryos in vitro for state-funded research projects, after full disclosure to

and consent of the research donor, but NOT OF THE HUMAN EMBRYOS THEMSELVES who are incapable of giving an informed consent to their use in stem cell experimentation, Article XXXV and the Stem Cell Act threaten to deprive Mary Scott Doe and the other human embryos she represents of their lives and liberty, including the opportunity to be adopted and brought to term by an adoptive mother, without substantive or procedural due process in violation of the Fourteenth Amendment.

103. The Declaratory Judgment Act authorizes this Court, "[i]n a case of actual controversy within its jurisdiction, . . . [to] declare the rights and other legal relations of any interested party seeking such declaration" and to grant "[f]urther necessary or proper relief" based on such declaratory judgment, *see* 28 U.S.C. §§ 2201, 2202.

104. Mary Scott Doe is an "interested party" entitled to declaratory and other necessary and proper relief under the Declaratory Judgment Act.

105. Plaintiffs Peter and Suzanne Murray, Tim and Courtney Atnip, Steven and Kate Johnson, and Cara and Gregory Vest are also "interested parties" entitled to declaratory and other necessary and proper relief under the Declaratory Judgment Act, in that, (a) as parents who are seeking to adopt *in vitro* human embryos, they will be injured by Defendants' threatened actions as authorized and mandated by the California Stem Cell Research and Cures Act, Cal. Health & Safety Code § 125290.10 et seq., and Article XXXV of the California Constitution, in that such actions will reduce the number of *in vitro* human embryos available for adoption, and (b) as parents who are seeking to adopt *in vitro* human embryos, such as Mary Scott Doe, they have standing to raise and assert the constitutional rights of these human embryos and prospective "children *in vitro*."

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Declaring that Mary Scott Doe and the other human embryos *in vitro* that she represents are "persons" who are entitled to the protection of the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

(b) Declaring that the California Stem Cell Research and Cures Act, Cal. Health & Safety Code § 125290.10 et seq., insofar as it authorizes Defendants to adopt interim and final research standards for, and to approve and issue grants of state monies to fund, human embryo stem experimentation, is null and void as violative of the Due Process Clause of the Fourteenth Amendment;

(c) Declaring that Article XXXV, Section 5 of the California Constitution, insofar as it establishes a state constitutional "right" to conduct state-funded, human embryo stem cell research, including the "right" to derive stem cells from human embryos, resulting in their immediate death and destruction, is null and void as violative of the Due Process Clause of the Fourteenth Amendment;

(d) Declaring that Article XXXV of the California Constitution and the California Stem Cell Research and Cures Act, Cal. Health & Safety Code § 125290.10 et seq., insofar as they authorize genetic parents or other "research donors" to donate human embryos *in vitro* for state-funded research projects, after full disclosure and consent of the research donors, but not of the human embryos who are incapable of giving an informed consent to their use and destruction in research or experimentation, are null and void as violative of the Due Process Clause of the Fourteenth Amendment;

(e) Temporarily and permanently enjoining Defendants, as well as their employees, officers, and agents, from (i) issuing or adopting any interim or final standards governing either the conduct of human embryo stem cell research and/or experimentation, the donation of

human embryos for such research and/or experimentation, and/or the derivation of stem cells from living human embryos, (ii) approving or issuing any bonds and/or any grant of state funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or (iii) undertaking any other action to encourage, assist or facilitate human embryo stem cell research and/or experimentation;

(f) Awarding Plaintiffs their costs of suit; and

(g) Granting such other relief as to this Honorable Court may seem just and equitable.

COUNT TWO
DECLARATORY JUDGMENT AND INJUNCTION: VIOLATION OF EQUAL PROTECTION

106. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 104 of the Complaint, as if fully set forth herein at length.

107. Mary Scott Doe, and the other human embryos she seeks to represent, are
(a) each a human embryo *in vitro,* a living entity, a developing human life, a human being, a human individual, and a person; and are
(b) each a member of the "people" of California under Cal.Const. Art. I, § 1 entitled to the inalienable rights guaranteed thereunder, and, thus, a "human being" and a "person" as recognized under California law,
and, thus, for either or both of these reasons, they are each a "person" entitled to the protection of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

108. Article XXXV, Section 5 of the California Constitution, by treating Mary Scott Doe and the other human embryos she represents, not as developing human lives on a par with other human life, but rather as "biological material", "excess cells" and "surplus products of in

vitro fertilization" that may be summarily destroyed in order to derive stem cells from such embryos for experimentation purposes, threatens to deprive Mary Scott Doe and the other human embryos *in vitro* she represents of the equal protection of the laws in violation of the Fourteenth Amendment.

109. Article XXXV of the California Constitution and the Stem Cell Act, by treating Mary Scott Doe and the other human embryos she represents, not as developing human lives on a par with other human life, but rather as "surplus products," "excess cells" or "biological material" that may be donated for use in state-funded, human embryo stem cell research and/or experimentation projects, even though such use will inevitably result in the death and destruction of the donated human embryos, threatens to deprive Mary Scott Doe and the other human embryos *in vitro* that she represents of the equal protection of the laws in violation of the Fourteenth Amendment.

110. Article XXXV of the California Constitution and the Stem Cell Act, by authorizing state-funded, human embryo stem cell experimentation, despite the impossibility of obtaining any kind of valid informed consent from the subjects of such research, while requiring valid informed consents from other human subjects of state-funded research, threatens to deprive Mary Scott Doe and the other human embryos *in vitro* that she represents of the equal protection of the laws in violation of the Fourteenth Amendment.

111. By proposing to fund human embryo stem cell experimentation, which experimentation necessarily requires the destruction of human embryos in order to obtain the stem cell lines required for the conduct of such experimentation, Defendants are imminently threatening to deprive Mary Scott Doe and the other human embryos she represents of the equal protection of the laws in violation of the Fourteenth Amendment.

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Declaring that Mary Scott Doe and the other human embryos *in vitro* that she represents are "persons" who are entitled to the protection of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

(b) Declaring Article XXXV, Section 5 of the California Constitution, insofar as it treats human embryos *in vitro*, developing human lives, as "biological material", "excess cells" and/or "surplus products of in vitro fertilization" that may be summarily destroyed in order to derive stem cells from such embryos for research and experimentation purposes, null and void as violative of the Equal Protection Clause of the Fourteenth Amendment;

(c) Declaring Article XXXV of the California Constitution and the California Stem Cell Research and Cures Act, Cal. Health & Safety Code § 125290.10 et seq., insofar as they treat human embryos as "surplus products," "excess cells" and/or "biological material" that may be donated for use in state-funded, human embryo stem cell research and/or experimentation projects, even though such use will inevitably result in the destruction of the donated human embryos, null and void as violating the Equal Protection Clause of the Fourteenth Amendment;

(d) Declaring Article XXXV of the California Constitution and the California Stem Cell Research and Cures Act, Cal. Health & Safety Code § 125290.10 et seq., insofar as they authorize state-funded, human embryo stem cell research and experimentation, despite the impossibility of obtaining any kind of valid informed consent from the human subjects of such research, null and void as violating the Equal Protection Clause of the Fourteenth Amendment;

(e) Temporarily and permanently enjoining

Defendants, as well as their employees, officers, and agents, from (i) issuing or adopting any interim or final standards governing either the conduct of human embryo stem cell research and/or experimentation, the donation of human embryos for such research and/or experimentation, and/or the derivation of stem cells from living human embryos, (ii) approving or issuing any bonds and/or grant of state funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or (iii) undertaking any other action to encourage, assist or facilitate human embryo stem cell research and/or experimentation;

(f) Awarding Plaintiffs their costs of suit; and

(g) Granting such other relief as to this Honorable Court may seem just and equitable.

COUNT THREE
DECLARATORY JUDGMENT AND INJUNCTION: VIOLATION OF THIRTEENTH AMENDMENT

112. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 110 of the Complaint, as if fully set forth herein at length.

113. Mary Scott Doe, a human embryo *in vitro* and a developing human life, is a "party" and a "human being" entitled to the protection of the Thirteenth Amendment to the United States Constitution.

114. Article XXXV and the Stem Cell Act, insofar as they treat human embryos as "surplus products," "excess cells" and/or "biological material" that may be donated for use and destruction in state-funded, human embryo stem cell research and/or experimentation projects, without the consent of the human embryos themselves, threatens to subject Mary Scott Doe and the other human embryos *in vitro* that she represents to a form of slavery or involuntary servitude in violation of the

Thirteenth Amendment to the United States Constitution.

115. Human embryo stem cell research necessarily requires a human embryo, i.e., a human being, to be treated like an experimental animal that is "property" and that therefore can be donated, devised, bought or sold for research purposes, and by so treating human embryos, and, thus, human beings as property, such experimentation violates the Thirteenth Amendment to the United States Constitution.

116. By proposing to fund or otherwise to facilitate, assist or encourage human embryo stem cell research and experimentation, which research and experimentation necessarily requires the involuntary use and destruction of human embryos in order to obtain the stem cell lines required for the conduct of such research and experimentation, Defendants are imminently threatening to deprive Mary Scott Doe and the other human embryos she represents of their right to be free from slavery and/or involuntary servitude in violation of the Thirteenth Amendment.

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Declaring that Mary Scott Doe and the other human embryos *in vitro* that she represents are "parties" who are entitled to the protection of the Thirteenth Amendment to the United States Constitution;

(b) Declaring Article XXXV of the California Constitution and the California Stem Cell Research and Cures Act, Cal. Health & Safety Code § 125290.10 et seq., insofar as they treat human embryos as "surplus products," "excess cells" and/or "biological material" that may be donated for involuntary use and destruction in state-funded, human embryo stem cell research and/or experimentation projects, without the consent of the human embryos themselves, violative of the Thirteenth Amendment to the United States Constitution;

(c) Temporarily and permanently enjoining Defendants, as well as their employees, officers, and agents, from (i) issuing or adopting any interim or final standards governing either the conduct of human embryo stem cell research and/or experimentation, the donation of human embryos for such research and/or experimentation, and/or the derivation of stem cells from living human embryos, (ii) approving or issuing any bonds and/or grant of state funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or (iii) undertaking any other action to encourage, assist or facilitate human embryo stem cell research and/or experimentation;

(d) Awarding Plaintiffs their costs of suit; and

(e) Granting such other relief as to this Honorable Court may seem just and equitable.

COUNT FOUR
DECLARATORY JUDGMENT AND INJUNCTION: FEDERAL PREEMPTION

117. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 116 of the Complaint, as if fully set forth herein at length.

118. The United States Congress has proscribed, in Section 510 of the Consolidated Appropriations Act of 2004, enacted on January 23, 2004, the expenditure of any federal money for human embryo stem cell experimentation, as follows:

> SEC. 510. (a) *None of the funds made available in this Act may be used for–*
> (1) the creation of a human embryo or embryos for research purposes; or
> (2) *research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death* greater than that allowed for research on fetuses in utero

under 45 CFR 46.208(a)(2) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)). (3) For purposes of this section, the term "human embryo or embryos" includes an organism, not protected as a human subject under 45 CFR 46 as of the date of enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

Section 510 of Public Law 108-199, 118 Stat. 3, 277 (January 23, 2004) (emphasis added).

119. The State of California receives billions of dollars annually in Federal assistance, making it possible for the State to attempt to devote up to three (3) billion dollars of the state bond initiatives authorized by Article XXXV and the Stem Cell Act to a purpose proscribed and prohibited by the Congress of the United States.

120. Under Section 510 of the Consolidated Appropriations Act of 2004, the use of federal dollars for human embryo stem cell research and experimentation is directly forbidden.

121. By adding Article XXXV to the California Constitution and enacting the Stem Cell Act, Proposition 71 attempts to do indirectly what cannot be done directly by using funds raised through the issuance of state bonds to get around the federal ban.

122. Were it not for the federal dollars received by the government of the State of California each year, the monies raised and to be raised by the sale of state bonds, that are sought to be expended by the State of California for human embryo research and experimentation, would have to be devoted, in whole or in part, to state expenditures presently paid for with federal dollars.

123. In effect, the federal dollars received by the government of the State of California, including much of the federal appropriations made under the Consolidated

Appropriations Act of 2004, are subsidizing California's effort to fund human embryo stem cell experimentation.

124. California is therefore using federal dollars to do indirectly that which it cannot use the federal dollars to do directly.

125. Such indirect use of the federal dollars received by the State of California to subsidize the funding of human embryo stem cell experimentation violates the congressional ban of the use of federal funds for human embryo stem cell research and experimentation set forth in Section 510 of the Consolidated Appropriations Act of 2004 and is accordingly PREEMPTED BY FEDERAL LAW. *See* U.S. Const., Art. VI.

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Declaring that the receipt and indirect use of federal funds by the government of the State of California to subsidize the funding of human embryo stem cell research and experimentation violates and is preempted by Section 510 of the Consolidated Appropriations Act of 2004, Public Law 108-199, § 510, 118 Stat. 3, 277 (January 23, 2004);

(b) Temporarily and permanently enjoining Defendants, as well as their employees, officers, and agents, from approving or issuing any bonds and/or grant of funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or somatic cell nuclear transfer research and/or experimentation projects;

(d) Awarding Plaintiffs their costs of suit; and

(e) Granting such other relief as to this Honorable Court may seem just and equitable.

COUNT FIVE
DECLARATORY JUDGMENT AND INJUNCTION: INTERPRETATION OF CALIFORNIA CONSTITUTION

RECONCILING ARTICLE XXXV's RIGHT TO CONDUCT STEM CELL EXPERIMENTATION WITH THE FUNDAMENTAL RIGHTS GRANTED BY ARTICLE I OF SUCH CONSTITUTION

126. Plaintiffs hereby incorporates the allegations of Paragraphs 1 through 125 of the Complaint, as if fully set forth herein at length.

127. Mary Scott Doe, a human embryo *in vitro* and a developing human life, is a "person" protected by Article I, Section 1 of the California Constitution, which provides that "[a]ll people are by nature free and independent and have inalienable rights" and that "[a]mong these are enjoying and defending life and liberty . . . and pursuing and obtaining safety, happiness, and privacy."

128. Mary Scott Doe is likewise a "person" protected by Article I, Section 7(a) of the California Constitution, which provides that "[a] person may not be deprived of life, [or] liberty . . . without due process of law or denied equal protection of the laws."

129. Mary Scott Doe is likewise a party protected by Article I, Section 6 of the California Constitution, which prohibits slavery and involuntary servitude.

130. In enacting, on November 2, 2004, Article XXXV, Section 5, establishing "a right to conduct stem cell research," the California electorate NEITHER EXPREESSLY NOR BY IMPLICATION repealed any portion of the fundamental constitutional protections afforded by Article I, Sections 1, 5, or 6 of the California Constitution.

131. When the various provisions of the California Constitution are construed together, the "right to conduct stem cell research" established by newly added Article XXXV, Section 5, cannot be regarded as an absolute, unfettered, or unlimited right, but rather the exercise of the right to conduct stem cell experimentation is limited and restricted by the fundamental rights accorded to all

persons and parties, including Mary Scott Doe, by the provisions of Article I of the California Constitution.

132. By proposing to fund *human embryo* stem cell research and experimentation, which research and experimentation necessarily requires the involuntary use and destruction of human embryos in order to obtain the stem cell lines required for the conduct of such research and experimentation, Defendants are imminently threatening to exceed the scope of "the right to conduct stem cell research" conferred by Article XXXV, Section 5 of the California Constitution and to deprive Mary Scott Doe and the other human embryos she represents of (a) their inalienable rights, including the right to enjoy and defend their lives and liberty, in violation of Article I, Section 1 of the California Constitution, (b) their right to be free from slavery and/or involuntary servitude in violation of Article I, Section 6 of the California Constitution, and (c) their rights not to be deprived of life and liberty without due process of law or denied equal protection of the laws in violation of Article I, Section 7(a) of the California Constitution.

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Declaring that Mary Scott Doe and the other human embryos *in vitro* that she represents are "persons" who are recognized as having inalienable rights, including the right of enjoying and defending life and liberty, by Article I, Section 1 of the California Constitution;

(b) Declaring that Mary Scott Doe and the other human embryos *in vitro* that she represents are "persons" entitled to the protection of the due process and equal protection clauses of Article I, Section 7(a) the California Constitution;

(c) Declaring that Mary Scott Doe and the other human embryos *in vitro* that she represents are parties entitled to the protection from slavery and involuntary servitude granted by Article I, Section 6 of the California

Constitution;

(d) Declaring that the right to conduct stem cell research conferred by Article XXXV, Section 5 of the California Constitution is not an absolute right, but rather must be exercised in such a manner so as not to violate the fundamental rights granted by Article I, Sections 1, 6 and 7(a) of the California Constitution;

(e) Declaring that the funding of human embryo stem cell research and experimentation exceeds the scope of "the right to conduct stem cell research" conferred by Article XXXV and violates (i) the inalienable rights of Mary Scott Doe and of the other human embryos *in vitro* that she represents guaranteed by Article I, Sections 1 of the California Constitution, (ii) their right to due process and equal protection as guaranteed by Article I, Section 7(a) of the California Constitution, and (iii) their right to be free from slavery and involuntary servitude as guaranteed by Article I, Section 6 of the California Constitution;

(f) Temporarily and permanently enjoining Defendants, as well as their employees, officers, and agents, from (i) issuing or adopting any interim or final standards governing either the conduct of human embryo stem cell research and/or experimentation, the donation of human embryos for such research and/or experimentation, and/or the derivation of stem cells from living human embryos, (ii) approving or issuing any bonds and/or grant of state funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or (iii) undertaking any other action to encourage, assist or facilitate human embryo stem cell research and/or experimentation, as the duty to pay back those bonds is violative of the Preamble to the Constitution of the State of California and Article I, Section 1's guarantee of INALIENABLE RIGHTS and California Constitution, Article I, Section 6's prohibition against slavery.

(g) Awarding Plaintiffs their costs of suit; and

(h) Granting such other relief as to this Honorable Court may seem just and equitable.

COUNT SIX
DECLARATORY JUDGMENT AND INJUNCTION: INTERPRETATION OF THE CALIFORNIA CONSTITUTION RESOLVING THE IRRECONCILABLE CONFLICT BETWEEN ARTICLE XXXV's RIGHT TO CONDUCT STEM CELL RESEARCH WITH THE INALIENABLE RIGHTS GUARANTEED TO MARY SCOTT DOE BY ARTICLE I, SECTION 1 OF SUCH CONSTITUTION

133. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 132 of the Complaint, as if fully set forth herein at length.

134. The Preamble of the Constitution of the State of California provides in pertinent part:

> "We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution."

135. Article I, Section 1 of the California Constitution provides in relevant part that "*[a]ll people* are *by nature* free and independent and *have inalienable rights*", much the same as the Declaration of Independence, the "charter" of our nation, recites that "all men are created equal and *endowed by their Creator with certain unalienable rights*." (Emphasis added.)

136. The "inalienable rights" referred to in Article I, Section 1 of the California Constitution, like the "unalienable rights" referenced in the Declaration of Independence, are beyond the reach of the legislative, executive, or judicial branches of the state or federal government, which may only acknowledge, affirm, or secure

such inalienable or unalienable rights, but which may not alter, amend, or abolish them.

137. Assuming that the right to conduct stem cell research established by Article XXXV, Section 5 includes the absolute and unfettered right to conduct human embryo stem cell research, which necessarily involves the involuntary use and destruction of human embryos, then an irreconcilable conflict exists between the right to conduct stem cell research established by Article XXXV, Section 5 of the California Constitution and the fundamental rights granted by Article I of the California Constitution, including especially the inalienable rights to the enjoyment and defense of life and liberty recognized and guaranteed by Article I, Section 1.

138. In resolving this conflict, it must be recognized that the "inalienable rights" of the people GUARANTEED by Article I, Section 1 of the California Constitution PREEXISTED the original enactment of the state constitution, as the people have these inalienable rights "by nature" (the "Laws of Nature and Nature's God" referenced in the Declaration of Independence), and that these rights are therefore so fundamental that they cannot be abrogated by subsequent constitutional amendments, not even by amendments added by the initiative process.

139. To the extent that Article XXXV, Section 5 attempts to abrogate the fundamental and inalienable rights to the enjoyment and defense of life and liberty of Mary Scott Doe and of the other human embryos *in vitro* that she represents, by conferring a right to use and destroy human embryos for the conduct of human embryo stem cell research and experimentation, Article XXXV, Section 5 fatally conflicts with Article I, Section 1 of the California Constitution and is, to that extent, null and void and unenforceable.

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Declaring that Mary Scott Doe and the other human embryos *in vitro* that she represents are "persons" who are recognized as having inalienable rights, including the right of enjoying and defending life and liberty, by Article I, Section 1 of the California Constitution;

(b) Declaring that, to the extent that Article XXXV, Section 5 of the California Constitution attempts to abrogate and the fundamental and inalienable rights to the enjoyment and defense of life and liberty of human embryos *in vitro*, by conferring a right to use and destroy such human embryos for the conduct of human embryo stem cell research and experimentation, Article XXXV, Section 5 fatally conflicts with Article I, Section 1 of the California Constitution and is, to that extent, null and void and unenforceable, including the authority to issue state bonds to fund such an initiative and the duty imposed thereunder to back such bonds by the full faith and credit of the state of California since the bonds are funding that which is 'unfaithful' to the inalienable rights of all human beings, including the right to be free from non-consensual involuntary servitude guaranteed by Article I, Section 6 of the California Constitution;

(c) Temporarily and permanently enjoining Defendants, as well as their employees, officers, and agents, from (i) issuing or adopting any interim or final standards governing either the conduct of human embryo stem cell research and/or experimentation, the donation of human embryos for such research and/or experimentation, and/or the derivation of stem cells from living human embryos, (ii) approving or issuing any bonds (which if the necessity for default is found to lie constitutionally would result in irreparable financial loss to countless members of the public) and/or grants of state funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or (iii) undertaking any other action to encourage, assist or facilitate human embryo stem cell research and/or experi-

mentation;

(d) Awarding Plaintiffs their costs of suit; and

(e) Granting such other relief as to this Honorable Court may seem just and equitable.

COUNT SEVEN
PROPOSITION 71 VIOLATES ARTICLE I, SECTION 1 OF THE CALIFORNIA CONSTITUTION.

140. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 139 of the Complaint, as if fully set forth herein at length.

141. Proposition 71, as enacted by California electorate on November 2, 2004, insofar as it authorizes, sanctions, provides public monies for, and otherwise assists and encourages human embryo stem cell research, violates Article I, Section 1 of the California Constitution, which provides in relevant part that "*[a]ll people,* [including all human embryos *in vitro*,] are *by nature* free and independent and *have inalienable rights*."

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Temporarily and permanently enjoining Defendants, as well as their employees, officers, and agents, from (i) issuing or adopting any interim or final standards governing either the conduct of human embryo stem cell research and/or experimentation, the donation of human embryos for such research and/or experimentation, and/or the derivation of stem cells from living human embryos, (ii) approving or issuing any bonds and/or grant of state funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or (iii) undertaking any other action to encourage, assist or facilitate human embryo stem cell research and/or experimentation;

(b) Awarding Plaintiffs their costs of suit; and

(c) Granting such other relief as to this Honorable Court may seem just and equitable.

COUNT EIGHT
PROPOSITION 71 VIOLATES ARTICLE I, SECTION 6 OF THE CALIFORNIA CONSTITUTION.

142. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 141 of the Complaint, as if fully set forth herein at length.

143. Proposition 71, as enacted by California electorate on November 2, 2004, insofar as it authorizes, sanctions, authorizes the issuance of bonds to finance, provides public monies for, and otherwise assists and encourages human embryo stem cell research, violates Article I, Section 6 of the California Constitution, which guarantees all human beings, including human embryos *in vito*, the right to be free from slavery and from involuntary servitude.

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Temporarily and permanently enjoining Defendants, as well as their employees, officers, and agents, from (i) issuing or adopting any interim or final standards governing either the conduct of human embryo stem cell research and/or experimentation, the donation of human embryos for such research and/or experimentation, and/or the derivation of stem cells from living human embryos, (ii) approving or issuing any bonds and/or grant of state funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or (iii) undertaking any other action to encourage, assist or facilitate human embryo stem cell research and/or experimentation;

(b) Awarding Plaintiffs their costs of suit; and

(c) Granting such other relief as to this Honorable Court may seem just and equitable.

COUNT NINE

PROPOSITION 71 VIOLATES THE DUE PROCESS GUARANTEE OF ARTICLE I, SECTION 7(a) OF THE CALIFORNIA CONSTITUTION.

144. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 143 of the Complaint, as if fully set forth herein at length.

145. Proposition 71, as enacted by California electorate on November 2, 2004, insofar as it authorizes, sanctions, authorizes the issuance of bonds to finance, provides public monies for, and otherwise assists and encourages human embryo stem cell research, violates the due process guarantee of Article I, Section 7(a) of the California Constitution, which guarantees all "persons", including all human embryos *in vitro*, their rights not to be deprived of life and liberty without due process of law.

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Temporarily and permanently enjoining Defendants, as well as their employees, officers, and agents, from (i) issuing or adopting any interim or final standards governing either the conduct of human embryo stem cell research and/or experimentation, the donation of human embryos for such research and/or experimentation, and/or the derivation of stem cells from living human embryos, (ii) approving or issuing any bonds and/or grant of state funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or (iii) undertaking any other action to encourage, assist or facilitate human embryo stem cell research and/or experimentation;

(b) Awarding Plaintiffs their costs of suit; and

(c) Granting such other relief as to this Honorable Court may seem just and equitable.

COUNT TEN

PROPOSITION 71 VIOLATES THE EQUAL PROTECTION GUARANTEE OF ARTICLE I, SECTION 7(a) OF THE CALIFORNIA CONSTITUTION.

146. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 145 of the Complaint, as if fully set forth herein at length.

147. Proposition 71, as enacted by California electorate on November 2, 2004, insofar as it authorizes, sanctions, authorizes the issuance of bonds to finance, provides public monies for, and otherwise assists and encourages human embryo stem cell research, violates the equal protection guarantee of Article I, Section 7(a) of the California Constitution, which guarantees all "persons", including all human embryos *in vitro*, the right to the equal protection of the laws.

WHEREFORE, Plaintiffs pray for the entry of a judgment against the Defendants:

(a) Temporarily and permanently enjoining Defendants, as well as their employees, officers, and agents, from (i) issuing or adopting any interim or final standards governing either the conduct of human embryo stem cell research and/or experimentation, the donation of human embryos for such research and/or experimentation, and/or the derivation of stem cells from living human embryos, (ii) approving or issuing any bonds and/or grant of state funds or monies to finance or fund human embryo stem cell research and/or experimentation projects, or (iii) undertaking any other action to encourage, assist or facilitate human embryo stem cell research and/or experimentation;

(b) Awarding Plaintiffs their costs of suit; and

(c) Granting such other relief as to this Honorable Court may seem just and equitable.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY SCOTT DOE, et al., Case No. ED CV 05-00438 RSWL (SGLx)

Plaintiff,

vs.

ROBERT KLEIN, II, et al.

Defendants.

NOTICE OF MOTION TO DISMISS OR TRANSFER ACTION FOR IMPROPER VENUE; OR IN THE ALTERNATIVE, TO TRANSFER FOR CONVENIENCE (28 U.S.C. §§ 1404(a), 1406(a); Fed. R. Civ. P. 12 (b)(3))

Date: October 24, 2005
Time: 9:00 a.m.
Courtroom: 21
Judge: Hon. Ronald S.W. Lew

TO PLAINTIFFS MARY SCOTT DOE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF PREBORN CHILDREN, PETER MURRAY AND SUZANNE MURRAY, COURTNEY ATNIP AND TIM ATNIP, STEVEN B. JOHNSON AND KATE ELIZABETH JOHNSON, CARA VEST AND GREGORY VEST, AND TO THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on October 24, 2005, at 9:00 a.m. or as soon thereafter as the matter may be heard, in the courtroom of Honorable Ronald S. W. Lew, in Courtroom 21, United States District Court, Central District of California, 312 N. Spring Street, 5th Floor, Los Angeles, CA 90012, defendants Robert Klein, II, et al., will and hereby do move this Court pursuant to Federal Rule of Civil Procedure, Rule 12(b)(3) for an order pursuant to 28 U.S.C. § 1406(a), transferring this case to the Northern District of California (or dismissing this case without prejudice) because plaintiffs filed their lawsuit in an improper venue. Alternatively, defendants move for an order pursuant to 28 U.S.C. § 14049a), transferring this case to the Northern District of California in the interests of justice and convenience. This motion is

based on this Notice of Motion, accompanying Memorandum of Points and Authorities, supporting Declaration of Tamar Pachter and supporting Declaration of Walter Barnes.

This motion is brought on the grounds that venue is improper in this District pursuant to 28 U.S.C. 1391(b), or alternatively, that it is inconvenient in this District and the court should transfer the case to the Northern District of California in the exercise of its discretion.

This motion is made following the required conference of counsel pursuant to L.R. 7-3, which took place by telephone on August 24, 2005, and again on September 9, 2005, as well as by letters dated September 2 and 12, 2005.

Dated: August 26, 2005

Respectfully submitted,
BILL LOCKYER
Attorney General of the State of California
RICHARD M. FRANK
Chief Deputy Attorney General
TOM GREENE
Chief Assistant Attorney General
JAMES M. HUMES
Chief Assistant Attorney General
LESLIE R. LOPEZ
Deputy Attorney General

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY SCOTT DOE, et al., Case No. ED CV 05-00438 RSWL (SGLx)

Plaintiff,

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS OR TRANSFER ACTION FOR

ROBERT KLEIN, II, et al.,

Defendants.

IMPROPER VENUE; OR IN THE ALTERNATIVE, TO TRANSFER FOR CONVENIENCE (28 U.S.C. §§ 1404(a), 1406(a); Fed. R. Civ. P. 12(b)3))

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TABLE OF CONTENTS

PAGE

INTRODUCTION 1
BACKGROUND AND PROCEDURAL HISTORY 1
ARGUMENT 5
I. VENUE IS NOT PROPER IN THE CENTRAL DISTRICT 6
A. Venue is Improper Under Section 1391(b)(1) Because None of the Defendants Resides in the Central District 6
B. Venue is Improper Under Section 1391(b)(2) Because No Substantial Part Of the Events or Omissions Giving Rise To the Claims Are Alleged to Have Occurred in the Central District 8
II. ALTERNATIVELY, THE COURT SHOULD TRANSFER TIIIS CASE TO THE NORTHERN DISTRICT FOR CONVENIENCE AND IN THE INTEREST OF JUSTICE 10
A. The Convenience of the Parties Weighs in Favor of Transfer 11
B. The Convenience of Witnesses Weighs In Favor of Transfer 12

C. The Interest of Justice Weighs in Favor Of Transfer 13
CONCLUSION 14

...INTRODUCTION

Defendants move pursuant to Federal Rules of Civil Procedure, Rule 12(b)(3), for an order pursuant to 28 U.S.C. §1406(a)(Section 1406(a)), transferring this case to the Northern District of California (or dismissing this case without prejudice) because plaintiffs filed their lawsuit in an improper venue. Alternatively, defendants move for an order pursuant to 28 U.S.C. §1406(a) (Section 1406(a)), transferring this case to the Northern District of California in the interests of justice and convenience. Section 1406(a) requires transfer or dismissal because venue in this Court is not authorized by 28 U.S.C. §1406(b)(Section 1406(b)), the grounds alleged in the First Amended Complaint. First Amended Complaint ¶ 3. Of the thirty-six (36) named defendants (all of whom are individuals sued in their official capacities as public officials of the State of California) none (0) resides in this District; thirty-three (33) reside in the Northern District; and the remaining three (3) reside in the Eastern District. Further, none of the events or omissions giving rise to the claims occurred in this District. The vast majority of the allegations of the complaint relevant to the injuries alleged occurred or will occur in the Northern District, and the remainder occurred in the Eastern District. The vast majority of the allegations of the complaint relevant to the injuries alleged occurred or will occur in the Northern District, and the remainder occurred in the Eastern District. Even if it could be argued that venue was proper in this District, prudential factors weigh heavily in favor of transfer. The plaintiffs' choice of forum is entitled to little weight: of the ten (10) named plaintiffs, just four (4) allegedly reside in this District, and

as to those four, no cognizable injury is alleged. In these circumstances, transfer to the Northern District is clearly appropriate.

BACKGROUND AND PROCEDURAL HISTORY

On November 2, 2004, California voters enacted Proposition 71, the California Stem Cell Research and Cures Act (Act). See Cal. Const., art. XXXV; Cal. Health & Safety Code § 125290.10 et seq. (a copy of Proposition 71 is attached to the accompanying Declaration of Tamar Pachter (Pachter Decl.) as Exh. A). The Act was designed to fill a federal funding gap by creating a state agency, the California Institute for Regenerative Medicine (CIRM), with the authority to issue state bonds, to fund stem cell research that will develop medical treatments and cures, and to set standards for that research. See Prop. 71§2. In the context of this case, it is crucial to note that Proposition 71 authorizes and funds all types of stem cell research, including research on adult stem cells, cord blood stem cells and progenitor stem cells, not just human embryonic stem cell research (also referred to as pluripotent stem cell research).[1]

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[1] California Constitution article XXXV, section 5 provides, In relevant part:
There is hereby established a right to conduct stem cell research which included research involving adult stem cells, cord blood stem cells, pluripotent stem cells, and/or progenitor cells. Pluripotent stem cells are cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types. Pluripotent stem cells may be derived from somatic cell nuclear transfer or from surplus products of in vitro fertilization treatments when such products are donated under appropriate informed consent procedures. Progenitor cells are multipotent or precursor cells that are partially differentiated, but retain the ability to divide and give rise to differentiated cells.

The CIRM is governed by the twenty-nine member Independent Citizens' Oversight Committee (ICOC). Cal. Health & Safety Code § 125290.20. The CIRM and the ICOC are located in the City of Emeryville in Alameda County. Declaration of Walter Barnes (Barnes Decl.) ¶ 3. The bonds that fund the research and work of the CIRM and the ICOC are issued as provided in the State General Obligation Bond Law. Cal. Health & Safety Code § 125291.35. The Act created the California Stem Cell Research and Cures Finance Committee (Finance Committee), which is the public agency with statutory power under Proposition 71 to authorize issuance of the bonds. See Cal. Health & Safety Code § 125291.40. On May 9, 2005, the Finance Committee met publicly in Sacramento and authorized issuance of the bonds.[2] Pachter Decl. ¶ 4.

On May 23, 2005, plaintiffs commenced this lawsuit, a facial challenge to the constitutional validity of Proposition 71, to the extent that Proposition 71 authorizes and funds human embryonic stem cell research .[3] The current, First Amended Complaint, alleges ten counts and seeks declaratory and injunctive relief preventing the members of the ICOC and the Finance Committee from funding human embryonic stem cell research on the grounds that it violates the federal and state constitutional rights of a frozen human embryo.

There are ten plaintiffs named in the First Amended Complaint. The lead plaintiff is the fictitiously-named Mary Scott Doe, allegedly a frozen human embryo, with no particular state or county of residence.[4] See First Amended Complaint ¶ 4. Plaintiff

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2. Although the Finance Committee authorized issuance of $3 billion in bonds, the State has not issued or sold the bonds, pending resolution of two state court challenges filed in April and June of this

year. Pachter Decl. ¶¶4,5. These two cases have now been consolidated in a single reverse validation action (see Cal. Civ. Proc. Code § 860 et seq.) before the Alameda Superior Court. Id. ¶5.

3. The plaintiffs did not attempt service of summons until August 5, 2005. With service of summons, plaintiffs served a copy of the "Amended Complaint." Pachter Decl. ¶6. But on August 3, this Court declined to file the "Amended Complaint." Id. ¶7. On August 26, the parties stipulated to an extension of time to September 23 for plaintiffs to respond to the "Amended Complaint." Id. ¶8. On August 17, plaintiffs had successfully filed the "First Amended Complaint, however, until September 7. Id. ¶9. On September 15, the Court refused to file plaintiffs' proof of service. Id. ¶7.

4. Although the caption purports to allege a class action, the First Amended Complaint does not include any of the allegations required by Local Rule 23-1 through 23-3, or any other of the conventional allegations of a class action.

National Association for the Advancement of Preborn Children (NAAPC) is an unincorporated association that represnts the rights of "preborn children" and is located at the same address as that of plaintiffs' counsel, in the State of Maryland.[5] Plaintiffs Peter and Susanne Murray, and Tim and Courtney Atnip are allegedly residents of Riverside, California "who are actively considering adopting another human embryo." See id. at ¶¶ 6,7. Plaintiffs Steven B. and Kate Elizabeth Johnson allegedly reside in the State of Pennsylvania. See id. at ¶ 8. Finally, plaintiffs Gregory and Cara Vest allegedly reside in the State Virginia. See id. at ¶ 9.

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5. Plaintiffs' counsel is not a member of the bar of the State of California, or the bar of this Court, and as of this writing, has not notified defendants' counsel that plaintiffs' counsel has sought admission pro hac vice, or has associated local counsel within Central District. Pachter Decl. ¶11.

Plaintiffs have sued, in their official capacities: the members of the ICOC, see First Amended Complaint ¶¶ 10-38; the President of the CIRM, id. at ¶ 39; and the State Treasurer, State Controller, and the State Director of the Department of Finance, as well as three previously named members of the ICOC, in their alternate roles as members of the Finance Committee, id. at ¶¶ 10, 40-42.

The First Amended Complaint alleges that Mary Scott Doe must be declared a "person" entitled to due process and equal protection of the law under the Fourteenth Amendment, U.S. Const., and article I, section 7(a) of the California Constitution, as well as "her right to the opportunity to be adopted by a married couple wishing to adopt a frozen human embryo," as provided in the Declaration of Independence and article I, section 1 of the California Constitution. See First Amended Complaint ¶¶ 61, 100-105, 108-111, 113-116. If further alleges that certain
married couples, who allegedly are "considering" adopting a frozen human embryo, both represent the interests of frozen embryos, and will themselves suffer due process injury and are entitled to similar relief. See id.¶ 105. The First Amended Complaint also alleges a right to relief under theories of federal preemption of state law, and various conflicts within the California Constitution. See id. at ¶¶117-147. The First Amended Complaint does not seek to prevent any form of stem cell research other than human embryonic stem cell research.

ARGUMENT

The purpose of the venue states is to protect defendants from being forced to defend in an unfair or inconvenient forum. See Abrams Shell v. Shell Oil Co., 165 F. Supp.2d 1096, 1106 (C.D. Cal. 2001). The venue requirements are specific and unambiguous, and are not to be liberally construed. See id.

There are two statutory grounds for change of venue. First, where venue is improper, on timely motion pursuant to Section 1406(a), the court must either dismiss the case, or transfer it, if transfer is in the interests of justice. See Abrams Shell, 165 F.Supp.2d at 1102-1103. Second, where venue is proper, under Section 1404(a) the court may exercise its discretion to transfer venue for convenience and in the interest of justice. See id. It is the plaintiffs' burden to establish facts showing that venue is proper. See id. at 1109. If venue is improper, it is plaintiffs' burden to show that transfer, rather than dismissal, is in the interest of justice. See Jones v. Radio Corp. of America, 129 F.Supp. 440, 441-42 (S.D.N.Y. 1955). If venue is proper, it is the defendants' burden to demonstrate that another form is more convenient. Zeta-Jones v. Spice House, 372 F.Supp.2d 568, 571 (C.D. Cal. 2005). The court may consider matters outside the pleadings, and the pleadings need not be accepted as true for purposes of establishing facts necessary to determine whether venue is proper. See Murphy v. Schneider National, Inc., 362 F.3d 1133, 1137 (9th Cir. 2003).

I. VENUE IS NOT PROPER IN THE CENTRAL DISTRICT

In cases such as this, where subject matter jurisdiction is not based on diversity, venue is proper "only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district inn which any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b). Plaintiff's choice of Central District fails these criteria.

A. Venue is Improper Under Section 1391(b)(1) Because None of the Defendants Resides in the Central District.

Section 1391(b)(1) does not afford a basis for venue because although all the defendants reside in California, none resides in the Central District. For purposes of venue under Section 1391(b)(1), the residence of state officials sued in an official capacity is not their place of personal residence, but the place where they perform their official duties. See Muezberg v. Barnes, 1998 WL 61207, *1, No. C-97-1042 THE (N.D. Cal. 1998) (citing Berry v. New York State Dept. of Correctional Servs., 808 F.Supp. 1106, 1108 (S.D.N.Y. 1992). See also O'Neill v. Battisti, 472 F.2d 789, 791 (6th Cir. 1972) (venue in action against the Ohio Supreme Court was "in the place where it performs its official duties, that is, Columbus, the State Capital and the seat of State Government"); 1 Schwarzer, Tashima & Wagstaffe, Federal Civil Procedure Before Trial (The Rutter group 2005) ¶ 4:260 at 4-31.

Since their inception in January of this year, the CIRM and the ICOC have been headquartered in the City of Emeryville, in Alameda County, which lies in the Northern District. See Barnes Decl. ¶3. Therefore, the "residence of the twenty-nine (29) ICOC defendants is in the Northern District. The State Treasurer, the State Controller, and Director of the Department of Finance maintain their offices in Sacramento, California's "permanent seat of government." Cal. Gov. Code §§450, 1060, 1061, 11151; Bonestell, Richardson & Co. v. Curry, 153 Cal. 418, 419, 95 P. 887, 887 (1908) (noting that official acts of state officials were performed in Sacramento, the place where they had their offices and transacted their official business). The single meeting of the Finance Committee, of which the Treasurer, Controller, Director of Finance and three members of the

ICOC are also members, was also held in Sacramento. See Pachter Decl. ¶4. Sacramento, therefore, is where the members of the Finance Committee "reside" for venue purposes. Because none of the defendant resides in the Central District, venue is not proper under Section 1391(b)(1). Under this section, venue would be proper in the Northern or Eastern Districts of California.[6]

B. Venue is Improper Under Section 1391(b)(2) Because No Substantial Part of the Events or Omissions Giving Rise to the Claims Are Alleged to Have Occurred in the Central District.

Like Section 1391(b)(1), Section 1391(b)(2) is not a predicate for venue because no "substantial part of the events or omissions giving rise to the claim occurred" in the Central District. See 28 U.S.C. § 1391(b)(2). The substantiality of operative events is determined by an assessment of their ramifications for the efficient conduct of the case. Myers v. Bennett Law Offices, 238 F.3d 1068, 1075-76 (9th Cir. 2001) (quoting Lamont v. Haig, 590 F.2d 1124, 1134-35 (D.C. Cir. 1978)).

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[6] Since the 1990 amendments to Section 1391, courts have differed in interpreting and applying the subsections of Section 1391(b). Hall v. South Orange, 89 F.Supp.2d 488, 491-92 (S.D.N.Y. 2000). Some courts hold that subsection (b)(2) does not provide an alternative basis for venue if there is a district in which venue is proper under subsection (b)(1). See Dashman v. Peter Letterese & Assocs., 999 F.Supp.553, 553-55 (S.D.N.Y. 1998); Cobra Partners LP v. Liegl, 990 F.Supp.332, 333-34 (S.D.N.Y. 1998) (relying on Leroy v Great Western United Corp., 443 U.S. 173, 99 S.Ct. 2710, 61 L.Ed.2d 464 (1979)0. Under this view, this case should be transferred to either the Northern or Eastern Districts without assessing whether subsection (b)(2) applies. While acknowledging that there is authority to support this view, the majority view relies on a plain reading analysis to hold that subsections (b)(1) and (b)(2) provide alternative bases for proper venue. See Hall, 89 F.Supp.2d at 492-93 (collecting cases).

If the allegations of the First Amended Complaint are given their broadest possible sweep, the events giving rise to the ten counts of the First Amended Complaint are: human embryo stem cell research funded as provided in Proposition 71. See First Amended Complaint ¶¶ 100-105, 108-111, 114-116, 119-125, 130-132, 137-139, 141, 143, 154, 147. These actions have not yet taken place, because the State has not yet sold the bonds that would fund this research, and the ICOC has not taken any action to fund human embryonic stem cell research. Pachter Decl. ¶5. Even if these events had occurred, the location of their occurrence would be in the Northern District, because that is where the CIRM and the ICOC are headquartered. Barnes Decl. ¶¶ 3, 5, 6; see O'Neill, 472 F.2d at 791. Plaintiffs seek to stop implementation of Proposition 71; the place where it is implemented is in the Northern District.

The plaintiffs' claims, on the other hand, have only a tenuous connection to the Central District, i.e., the Murray and Atnip plaintiffs allege that they live in Riverside and are "considering" adopting an embryo. See First Amended Complaint ¶¶ 6-7. Thus, the only arguable basis for venue in this District is that the Murray and Atnip plaintiffs would be injured in the Central District because they live in Riverside. In the context of tort cases, the place of injury has been found sufficiently substantial as a predicate for venue. See Myers, 238 F.3d at 1076.

This tort analysis, however, does not apply in the context of this case. A tort injury is certain and determinable, while the Murrays' and Atnips' alleged injuries are wholly speculative. The Murray and Atnip plaintiffs do not even allege that they have decided to adopt an embryo, only that they are "considering" such an adoption. First Amended Complaint ¶¶ 10,11. Even if the Murray and Atnip plaintiffs alleged that they have a present intent to adopt an embryo, they could not allege that

implementation of Proposition 71 would prevent them from adopting an embryo, or a right to any particular embryo, even an embryo located in the Central District. See Smelt v. County of Orange, 374 F.Supp.2d 861, 870-71 (C.D. Cal.2005) (discussing the injury requirement for standing to sue). But even if the alleged injuries of the Murrays' and Atnips were cognizable in law or remediable by a court, these injuries would be insufficiently substantial to satisfy venue requirements. Indeed, if the injury of the Murray and Atnip plaintiffs were sufficiently substantial for venue to be proper in the Central District, then by the same argument, venue in this action against California state officials would be equally proper in Pennsylvania, where the Johnson plaintiffs live, or in Virginia, where the Vest plaintiffs live. As basis for venue, the location of potential adopters of frozen embryos, whether in Riverside, Pennsylvania, or Virginia, does not lead to the "efficient conduct of the suit." See Myers, 238 F.3d at 1075-76; see also Abrams Shell, 165 F.Supp.2d at 1107n.6 (noting that Section 1391(b)(2) could not be argued as a basis for venue because "primary 'events or omissions' at issue" did not take place in the plaintiffs' chosen forum (emphasis in original)).

Because venue is improper in the Central District, the case should be transferred if in the interest of justice, or dismissed without prejudice.

II. ALTERNATIVELY, THE COURT SHOULD TRANSFER THIS CASE TO THE NORTHERN DISTRICT FOR CONVENIENCE AND IN THE INTEREST OF JUSTICE.

Even if venue were proper in the Central District, the Court should transfer this case to the Northern District "[f]or the convenience of parties and witnesses, [and] in the interest of justice...." 28 U.S.C. § 1404(a). Section 1404(a) vests discretion in the district court to adjudicate motions to transfer according to an individualized, case-by-case consideration of convenience and

fairness. See Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir 2000). Generally, a discretionary transfer is appropriate where, as here, the case "might have been brought" in another district, and statutory requirements and other practical considerations warrant a transfer. As set forth above, the case might have been brought in either the Northern or the Eastern District of California.[7] The Northern District, however, is the most convenient forum.

When ruling on a Section 1404(a) motion to transfer, the court must evaluate three statutory elements: convenience of the parties, convenience of the witnesses, and the interest of justice. See Jones, 211 F.3d at 498-99. Specifically, the Ninth Circuit has identified at least nine factors to be considered: (1) the location where the relevant agreements were negotiated or executed; (2) the state most familiar with governing law; (3) plaintiffs' choice of forum; (4) each of the parties' contacts with the forum; (5) the contacts relating to plaintiffs' cause of action in the chosen forum; (6) the differences in the costs of litigation in the two forums; (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses; (8) the ease of access to sources of proof;

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[7] Even though the Eastern District is a proper venue under Section 1391(b)(1), it is not a convenient forum under Section 1404(a) analysis. The single meeting of the Finance Committee to authorize issuance of the Proposition 71 bonds is the only connection this case has to the Eastern District. But the bonds, because their proceeds may be used to fund stem cell research other than human embryonic stem cell research, have little practical significance in this case. Even in the plaintiffs prevailed on their claims, they would only succeed in stopping CIRM and ICOC from funding human embryonic stem cell research from the proceeds of the bonds; they have not sought and could not succeed in stopping the State from raising the funds in the first instance.

and (9) the presence of a forum selection clause. Zeta-Jones, 372 F.Supp.2d at 575-76 (quoting Jones, 211 F.3d at 498-99). Of these factors, six are relevant consideration in this case: plaintiffs' choice of forum, each of the parties' contacts with the forum, the contacts relating to plaintiffs' cause of action in the chosen forum, the differences in the costs of litigation in the two forums, the availability of compulsory process to compel attendance of unwilling non-party witnesses, and the relative ease of access to sources of proof.

A. The Convenience of the Parties Weighs in Favor of Transfer.

In the Ninth Circuit, plaintiffs' choice of forum is not entitled to deference just because it is the forum they have chosen; there must be some connection between the forum and the plaintiffs, most commonly that the chosen forum is where the plaintiffs reside. See Wireless Consumers Alliance, Inc. v. T-Mobile USA, Inc., 2003 WL 22387598, *3, No. C-03-3711 MHP (N.D. Cal. 2003) (citing Pacific Car & Foundry Co. v. Pence, 403 F.2d 949, 954-55 (9th Cir. 1968)). In the absence of such connection, plaintiffs' choice of forum is entitled to substantially less deference. See Gemini Capital Grp., Inc. v. Yap Fishing Corp., F.3d 1088, 1091 (9th Cir. 1998); Carolina Gas. Co. v. Data Broadcasting Corp., 158 F.Supp.2d 1044, 1048 (N.D. Cal 2001). Plaintiffs' choice of forum also receives less deference when, as here, plaintiffs sue in a representative capacity. See Wireless Consumers Alliance, 2003 WL 22387598, *3 (citing Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987)).

In this case, little deference is due plaintiffs' choice of forum, because six of the ten plaintiffs do not reside in this state; the case is brought in a representative capacity;[8] as set forth above, the case has no better claim

[8] The First Amended Complaint alleges claims in a representative capacity for each of the named plaintiffs. First Amended Complaint

¶¶1,5,60,90,96,98-102, 105. It is plaintiffs' burden to establish proper venue for each named plaintiff suing in a representative capacity. See Abrams Shell, 165 F.Supp.2d at 1107n.5.

to a connection with the Central District greater than it has to two other, out-of-state districts; and, in the context of the claims alleged, the defendants have no relevant contacts with the Central District. See Zetz-Jones, 372 F.Supp.2d at 576 (ordering transfer and noting that plaintiff's principle residence is in Bermuda); Dudash v Varnell Struck & Assocs., Inc. 2004 WL 2623903, No. C-04-2748 MHP, *4 (N.D. Cal. 2004) (ordering transfer and noting that plaintiff does not reside or work in the transferor district, while defendants reside in the transferee district); National Assoc. of Life Underwriters v. Clarke, 761 F.Supp. 1285, 1293 (W.D. Tex. 1991) (holding in case against government entities that equitable considerations require discretionary transfer where only substantial connection of case to transferor forum was residence of minority of plaintiffs).

B. The Convenience of Witnesses Weighs in Favor of Transfer.

The convenience of witnesses and "access to sources of proof" weigh in favor of transfer to the Northern District. Because this case is a facial challenge to the constitutionality of Proposition 71, witnesses should not be necessary. To the extent that documentary evidence is necessary, the relevant documents are located in Emeryville or Sacramento, not in the Central District. Barnes Decl. ¶7. Moreover, plaintiffs cannot subpoena state staff persons to attend depositions in the Central District, see Fed. R. Civ. P. 45(c)(3)(A)(ii), (iv); and it would be burdensome and expensive for state staff persons to travel to the Central District for trial, see Fed. R. Civ. P. 45(c)(3)(A)(iv).

C. The Interest of Justice Weighs in Favor of Transfer.

Lastly, transferring this action to the Northern District would be in the interest of justice, which is predominant importance in weighing a discretionary transfer. See Pratt v. Rowland, 769 F.Supp. 1128, 1133 (N.D. Cal. 1991). Defendants would needlessly incur substantial costs and burdens by having to produce witnesses hundreds of miles from their work location. On the other hand, plaintiffs, who are litigating from Maryland, would not be prosecuting this case in the Northern District, incur any costs in addition to those it already incurs by litigating in this Court. In addition, because the Central District is California's busiest federal judicial district, with more than twice the case filings of the Northern District, see Judicial Business of the United States, U.S. District Courts-Civil Cases Commenced, Terminated & Tending 2003-2004, http://www.uscourts.gov/judbus2004/appendices/c.pdf, it would serve the interest of justice to move this case to a district with a less burdensome case load and where it might be resolved more quickly.

The prudential factors weigh heavily in favor of transferring this case to the Northern District of California.

CONCLUSION

For the forgoing reasons, Defendants respectfully request that this Court grant their motion to transfer this case to the Northern District of California or dismiss without prejudice, and grant such other further relief as the Court may deem just and proper.

Dated: August 26, 2005

Respectfully submitted,

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY SCOTT DOE, et al., CASE NO.:
EDCV 05-438 RSWL (SGLx)

Plaintiff,

DECLARATION OF TAMAR PACHTER IN SUPPORT OF MOTION TO DISMISS OR TRANSFER ACTION FOR IMPROPER VENUE; OR IN THE ALTERNATIVE TO TRANSFER FOR CONVENIENCE 28 (U.S.C. §§ 1404(a), 1406(a); Fed. R. Civ. P. 12(b)(3))

v.

ROBERT KLEIN, II, et al.,

Defendants

Date: October 24, 2005
Time: 9:00 a.m.
Court: 21
Judge: Hon. Ronald S.W. Lew

I, Tamar Pachter, declare as follows:

1) I am employed as a Deputy Attorney General in the Office of the California Attorney General in San Francisco and I represent the defendants in the is action as lead counsel. I am licensed to practice law in good standing in the State of California and in all the federal judicial districts in the State of California, including the Central District of California.

2) I have personal knowledge of the matters set forth herein, and if sworn as a witness, I would competently testify thereto.

3) Attached hereto as Exhibit A is a true and correct copy of the text of Proposition 71, downloaded from the official web site of the California Secretary of State, at http://www.voterguide.ss.ca.gov/propositions/prop71text.p

df.

4) I am lead counsel in the Attorney General's Office for the California Stem Cell Research and Cures Finance Committee (Finance Committee). On May 9, 2005, I attended by telephone the only meeting the Finance Committee has held. That meeting was held to authorize issuance of $3 billion in general obligation bonds pursuant to Proposition 71.

5) The State of California has not issued the bonds authorized by the Finance Committee due to the pendency of two actions brought in state superior court, both of which challenge the constitutional validity of Proposition 71 under state law. Although no court has found Proposition 71 invalid and there is no injunction or other order forbidding sale of the bonds, as a practical matter, until resolved, these lawsuits make marketing of the bonds surpassingly difficult. The first of these two actions, filed in April of this year in Alameda Superior Court, is styled People's Advocate et al. v. Independent Citizens' Oversight Committee, No. HG05206766. The second of the two actions filed in June of this year in Sacramento Superior Court, is styled California Family Bioethics Council LLC v. California Institute for Regenerative Medicine, et al., No. 05AS02927. By order of the Alameda Superior Court, the Sacramento action has been transferred to Alameda County and two cases are now consolidated for all purposes. The cases are at issue and the Alameda Superior Court has scheduled a hearing on dispositive motions for judgment on the pleadings for November 17, 2005.

6) On August 5, 2005, I received a telephone call from counsel present at the public meeting of the Independent Citizens' Oversight Committee (ICOC) in San Diego, informing me that a process server was attempting service of summons and complaint in this action. I asked

counsel to accept service for the members of the ICOC and to forward the documents to me. The documents counsel forwarded to me, as well as documents later served on the State Treasurer's Office, the State Controller's Office and the office of the Director of the Department of Finance included a summons and a copy of a document entitled "Amended Complaint."

7) I have reviewed and am familiar with the PACER docket report in this case. That report reflects that on August 3, 2005, this Court rejected filing of the "Amended Complaint." That report also reflects that on August 17, plaintiffs successfully filed the "First Amended Complaint." That report also reflects that September 15, this Court rejected filing the plaintiffs' proof of service.

8) On August 26, 2005, at my request, R. Martin Palmer, who is counsel of record to the plaintiffs in this action, agree to stipulate to an extension of time to September 23, for defendants to respond to the "Amended Complaint."

9) Mr. Palmer did not serve the First Amended Compliant until I requested a copy by letter dated September 2, 2005. On receipt, I agreed to accept service of the First Amended Complaint on behalf of all defendants as of September 7 and Mr. Palmer and I agreed that the deadline for defendants to respond to the First Amended Complaint was September 27. In compliance with L.R. ___, no copy of the correspondence confirming these agreements is attached.

10) On August 24, 2005, I contacted Mr. Palmer by telephone to make several inquiries. Among them I asked Mr. Palmer to stipulate to a motion to transfer venue to the Northern District of California, because venue is not proper in this District. Mr. Palmer asked me to put my

request in writing, which I did by letter dated September 2. Mr. Palmer has not responded to my request.

11) On August 24, 2005, I also asked Mr. Palmer if he was admitted to practice in California or in this Court. Mr. Palmer responded negatively, but stated that he is admitted to practice in the U.S. Court of Appeals for the Ninth Circuit. I told Mr. Palmer that under the Local Rules, he would also need to be admitted to practice before this Court, and obtain local counsel within this District. At Mr. Palmer's request, by letter dated September 2, I explained the Local Rule requirements and provided Mr. Palmer with a copy of the local rules regarding admission and appearances before this Court. To my knowledge, Mr. Palmer has not sought admission and appearances before this Court. To my knowledge, Mr. Palmer has not sought admission pro hac vice or associated local counsel in this action.

12) I am lead counsel in the Attorney General's Office for ICOC and regularly review the minutes of ICOC meetings. Pursuant to Proposition 71, any decision to fund any type of stem cell research must be made by the ICOC in a public meeting. The ICOC has not yet funded any stem cell research, included any human embryonic stem cell research.

I declare under penalty of perjury of the laws of the State of California and the laws of the United States that the foregoing is true and correct. Executed this 26th day of September 2005 at San Francisco, California.

/s/

Tamar Pachter

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Attorneys for All Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY SCOTT DOE, et al., CASE NO.: EDCV 05-438 RSWL (SGLx)

Plaintiff, **DECLARATION OF WALTER BARNES IN SUPPORT OF MOTION TO DISMISS OR**

TRANSFER ACTION FOR IMPROPER VENUE; OR IN THE ALTERNATIVE TO TRANSFER FOR CONVENIENCE 28 (U.S.C. §§ 1404(a), 1406(a); Fed. R. Civ. P. 12(b)(3))

v.

HONORABLE
RONALD S.W. LEW

ROBERT KLEIN, II, et al.,

Defendants

Date: October 24, 2005
Time: 9:00 a.m.
Court: 21
Judge: Hon. Ronald S.W. Lew

I, Walter Barnes, declare as follows:

1. I am the Chief Administrative Officer of the California Institute for Regenerative Medicine (CIRM), and I am submitting this declaration in support of defendants; motion to dismiss or transfer this action. All matters set forth in this declaration are personally known to me. If sworn as a witness in this matter, I could and would testify competently as to all matters set forth in this declaration.

2. I was appointed as Chief Administrative Officer of the CIRM in July 2005. From February 2005 to June 30, 2005, I served as the CIRM's interim Chief Administrative Officer and Comptroller, pursuant to an inter-agency agreement with the California State Controller's Office. My duties as Chief Administrative Officer of the CIRM include director of, and chief advisor to the President, CIRM, regarding all matters pertaining to the support and operations of CIRM and the ICOC, including: human resources, accounting and budgeting, procurements and contracts, space management, etc. I

have over 36 years of executive management and supervisory experience in state government.

3. After Proposition 71 was passed in November 2004, the CIRM began to conduct business. In February 2005, the CIRM selected Emeryville, California to serve as the location for the CIRM's interim headquarters until a permanent headquarters location could be selected. The CIRM has been conducting business from its offices in Emeryville. In addition, the ICOC Chair, Robert Klein, and the ICOC Vice-Chair, Ed Penhoet, have offices at the CIRM's headquarters in Emeryville. Also, the CIRM staff that supports the ICOC are located at the CIRM's headquarters in Emeryville. Neither the CIRM nor the ICOC or any of its subcommittees or workgroups maintain any offices in Southern California.

4. In March 2005, the California Department of General Services issued a Request for Proposals on behalf of the ICOC, seeking bids for office space to house the permanent headquarters of the CIRM, the Chair and Vice-chair of the ICOC, and all CIRM staff including those that support the ICOC, the working groups and entities established by Proposition 71. Following a lengthy statewide review and evaluation process, in May 2005, the ICOC selected San Francisco as the site for the CIRM's permanent headquarters. The CIRM and the ICOC is presently scheduled to move to the San Francisco headquarters in November 2005.

5. Once the San Francisco headquarters is opened, I and all CIRM staff, the ICOC Chair and ICOC Vice-chair will be located at this location.

6. All official books and records of the ICOC, the CIRM and all of the working groups and entities established by Proposition 71 are maintained at the CIRM's current headquarters in Emeryville, and will all be maintained at the new headquarters site in San Francisco.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 26, 2005, at Sacramento, California.

/s/ _____.
Walter Barnes
Chief Administrative Officer
California Institute for Regenerative Medicine

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MARY SCOTT DOE, et al.,

Plaintiff,

v.

ROBERT KLEIN, II, et al.,

Defendants.

CASE NO.:
ED CV 05-00438 RSWL
(SGLx)

NOTICE OF MOTION FOR RECONSIDERATION OF ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR IMPOPPER VENUE (Fed.R.Civ.P.59(e), L.R.7-18(c))

Judge: January 2, 2006
Time: 9:00 a.m.
Courtroom: 21
Judge: Hon. Ronald S.W. Lew

TO DEFENDANTS ROBERT KLEIN II et al.

PLEASE TAKE NOTICE that on January 2, 2006 at 9:00 a.m. or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Ronald S.W. Lew, in Courtroom 21, United States District Court, Central District of California, 312 N. Spring Street, 5th Floor, Los Angeles, CA 90012, plaintiffs Mary Scott Doc, National Association for the Advancement of Preborn Children, Peter Murray and Suzanne Murray, Courtney Atnip and Tim Atnip, Steven B. Johnson and Kate Elizabeth Johnson, Cara Vest and Gregory Vest, will and hereby do move this Court pursuant to Fed.R.Civ.P. 59(e) and L.R. 7-18(c) for an order granting reconsideration of the Court's October 24, 2004 oral decision to grant the Defendants Motion to Dismiss for Improper Venue. This motion is based on this Notice of Motion and the accompanying Memorandum of Points and Authorities.

This motion is brought on the grounds that the Court overlooked and failed to consider a number of material facts that were presented to the Court before it made its decision.

This motion is made following the required conference of counsel pursuant to L.R. 7-3, which took place by telephone on October 27, 2005.

Dated: November 17, 2005

Respectfully submitted,

/s/
R. Martin Palmer
Law Offices of
Martin Palmer

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Hagerstown MD 21740
(301) 790-0640
(301) 790-0684 (Facsimile)
info@martinpalmer.com

Attorney for Plaintiffs:
Mary Scott Doe, et al.

Notice is hereby given that MARY SCOTT DOE, plaintiff in the above named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order Granting Defendant's Motion to Dismiss for Improper Venue, entered in the action on November 8, 2005 and all interlocutory orders that gave rise to that judgment. A copy of the ORDER is attached hereto together with copy of ORDER denying motion for reconsideration entered January 27, 2006. A Representation Statement, as required by Local Rule 17 and Ninth Circuit Rule 3-2 is also attached hereto and filed herewith.

February 24, 2006

/S/_____
R. Martin Palmer
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Hagerstown MD 21740
(301) 790-0640
Attorney for Plaintiffs

R. Martin Palmer
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Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MARY SCOTT DOE, et al., CASE NO.:

Plaintiff, DIST. CT NO. EDCV 05-00438 RSWL (SGLx)

v.

ROBERT KLEIN, II, et al., NOTICE OF APPEAL

Defendants.

Notice is hereby given that MARY SCOTT DOE, plaintiff in the above named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order Granting Defendant's Motion to Dismiss for Improper Venue, entered in the action on November 8, 2005 and all interlocutory orders that gave rise to that judgment. A copy of the ORDER is attached hereto together with copy of ORDER denying motion for reconsideration entered January 27, 2006. A Representation Statement, as required by Local Rule 17

and Ninth Circuit Rule 3-2 is also attached hereto and filed herewith.

February 24, 2006

/S/_____

R. Martin Palmer
Law Offices of Martin Palmer
21 Summit Avenue
Hagerstown MD 21740
(301) 790-0640
Attorney for Plaintiffs

No. 06-55387

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MARY SCOTT DOE, et al.

Plaintiffs-Appellants,

v.

ROBERT KLEIN, Chairman, et al.,

Defendants-Appellants.

On Appeal From an Order of the United States District Court for Central District of California

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APPELLANTS' REQUEST FOR JUDICIAL NOTICE

R. Martin Palmer
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Attorney for Plaintiffs-Appellants

Pursuant to Federal Rules of Evidence, Rule 201, Appellants by their undersigned counsel, request that this Court take judicial notice of the approved, official minutes of the meetings held by the Independent Citizens Oversight Committee (ICOC) held on January 6, 2005, April 7, 2005, July 12, 2005, August 5, 2005, September 9, 2005, November 2, 2005, December 6, 2005, February 10, 2006, and April 6, 2006. True and correct copies of these documents are attached to the accompanying Affidavit of Martin Palmer, as Exhibits 1, 2, 3, 4, 5, 6, 7, 8 and 9. Under Rule 201, this Court may take judicial notice of the minutes of meetings of the ICOC, which are posted online at the official website of the California Institute for Regenerative Medicine (CIRM) and are generally available for download by the public. See Fed.R.Evid. 201 (b) (an adjudicative fact which may be judicially noticed is one "not subject to reasonable dispute in that it is either (1) generally known . . . or (2) capable of accurate and ready determination through unquestionably reliable sources."

Dated: August __, 2006

R. Martin Palmer
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Attorney for Plaintiffs- Appellants:
MARY SCOTT DOE, a human embryo born in the United States (and subsequently frozen in which state of cyro-preservation her life is presently suspended), individually and on behalf of all other frozen human embryos similarly situated; NATIONAL ASSOCIATION FOR THE

ADVANCEMENT OF PREBORN CHILDREN (NAAPC); PETER MURRAY; SUZANNE MURRAY; COURTNEY ATNIP; TIM ATNIP; KATE ELIZABETH JOHNSON; STEVEN B. JOHNSON; CARA VEST; GREGORY VEST

No. 06-55387

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARY SCOTT DOE, et al.

Plaintiffs-Appellants,

v.

ROBERT KLEIN, Chairman, et al.,

Defendants - Appellants,

On Appeal From an Order of the
United States District Court for Central District of
California

AFFIDAVIT OF R. MARTIN PALMER IN SUPPORT OF APPELLANTS' REQUEST FOR JUDICIAL NOTICE

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Law Offices of Martin Palmer
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info@martinpalmer.com
Attorney for Appellants

I, R. Martin Palmer, affirm the following to be true

1. I am an attorney duly licensed to practice law in the State of Maryland and before this Court.

2. I submit this declaration in support of Appellants' Request for Judicial Notice.

3. I have personal knowledge of the matters herein, and if called to testify, would competently testify thereto.

4. Attached hereto as Exhibit 1 is a true and correct copy of the approved, official minutes of the Independent Citizens Oversight Committee held on

January 6, 2005, downloaded from the official website of the California Institute of Regenerative Medicine at http://www.cirm.ca.gov/ minutes/pdf/2005/01-06-05.pdf.

5. Attached hereto as Exhibit 2 is a true and correct copy of the approved, official minutes of the Independent Citizens Oversight Committee held on April 7, 2005, downloaded from the official website of the California Institute of Regenerative Medicine at http://www.cirm.ca.gov/ minutes/pdf/2005/04-07-05.pdf.

6. Attached hereto as Exhibit 3 is a true and correct copy of the approved, official minutes of the Independent Citizens Oversight Committee held on July 12, 2005, downloaded from the official website of the California Institute of Regenerative Medicine at http://www.cirm.ca.gov/ minutes/pdf/2005/07-12-05.pdf.

7. Attached hereto as Exhibit 4 is a true and correct copy of the approved, official minutes of the Independent Citizens Oversight Committee held on August 5, 2005, downloaded from the official website of the California Institute of Regenerative Medicine at http://www.cirm.ca.gov/ minutes/pdf/2005/08-05-05.pdf.

8. Attached hereto as Exhibit 5 is a true and correct copy of the approved, official minutes of the Independent Citizens Oversight Committee held on September 9, 2005, downloaded from the official website of the California Institute of Regenerative Medicine at http://www.cirm.ca.gov/ minutes/pdf/2005/09-09-05.pdf.

9. Attached hereto as Exhibit 6 is a true and correct copy of the approved, official minutes of the Independent Citizens Oversight Committee held on November 2, 2005, downloaded from the official website of the California Institute of Regenerative Medicine at http://www.cirm.ca.gov/ minutes/pdf/2005/11-02-05.pdf.

10. Attached hereto as Exhibit 7 is a true and correct copy of the approved, official minutes of the Independent Citizens Oversight Committee held on December 6, 2005, downloaded from the official website of

the California Institute of Regenerative Medicine at http://www.cirm.ca.gov/ minutes/pdf/2005/12-06-05.pdf.

11. Attached hereto as Exhibit 8 is a true and correct copy of the approved, official minutes of the Independent Citizens Oversight Committee held on February 10, 2006, downloaded from the official website of the California Institute of Regenerative Medicine at http://www.cirm.ca.gov/ minutes/pdf/2006/02-10-06.pdf.

12. Attached hereto as Exhibit 9 is a true and correct copy of the approved, official minutes of the Independent Citizens Oversight Committee held on April 6, 2006, downloaded from the official website of the California Institute of Regenerative Medicine at http://www.cirm.ca.gov/minutes/pdf/2006/04-06-06.pdf.

I declare under penalty of perjury of the laws of the United States and the State of Maryland that the foregoing is true and correct.

/S/_____

R. Martin Palmer

Excerpt of Exhibit 1

California Institute for Regenerative Medicine

Minutes of the
Independent Citizens Oversight Committee (ICOC) to the
California Institute for Regenerative Medicine (CIRM)

Meeting on January 6, 2005

University of Southern California
Keck School of Medicine
Mayer Auditorium, Keith Administrative Building
1975 Zonal Avenue, Los Angles, CA 90003 ...

...Agenda Item #8
Consideration of the location and headquarters of the Institute and formation of a committee for purposes of locating suitable office space for the Institute and making a recommendation to the board on February 3, 2005...

Excerpt from Exhibit 2

April 7, 2005 ICOC Meeting Minutes

Metropolitan Water District of Southern California
Board Room at Headquarters Building
Los Angeles, CA 90012-2944...

...Agenda Item #16
Consideration of resolution: requesting the California Stem Cell Research and Cures Finance Committee to approve the issuance of bonds, in an amount not to exceed $3 billion, pursuant to the California Stem Cell Research and Cures Bond Act of 2004 (Proposition 71); authorizing application to the Pooled Money Investment Board for interim financing in relation to such bonds; and delegating duties to the Chairman in relation thereto...

Excerpt from Exhibit 3

Tuesday, July 12, 2005 ICOC Meeting Minutes

UCI University Club
University of California, Irvine
801 East Peltason Drive
Irvine, CA 92697...

Excerpt from Exhibit 4

Friday, August 5, 2005 ICOC Meeting Minutes

University of California, San Diego
Price Center
Ballrooms A & B
9500 Gilman Drive
La Jolla, CA 92093-0008...

Excerpt from Exhibit 5

Friday, September 9, 2005 ICOC Meeting Minutes

Sheraton Grand Sacramento
1230 J Street
Sacramento CA 95814...

Excerpt from Exhibit 6

Wednesday, November 2, 2005 ICOC Meeting Minutes

Moscone Center South
747 Howard Street
Room 304
San Francisco CA...

Excerpt from Exhibit 7

Tuesday, December 6, 2005 ICOC Meeting Minutes

City of Hope
Cooper Auditorium
1500 E. Duarte Road
Duarte, CA 91010...

Excerpt from Exhibit 8

Friday, February 10, 2006 ICOC Meeting Minutes

Stanford University
Arrillaga Alumni Center
McCaw Hall
326 Galvez Street
Stanford, CA 94305...

Excerpt from Exhibit 9

Thursday, April 6, 2006 ICOC Meeting Minutes

Mayer Auditorium
Keith Administrative Building
Keck School of Medicine of USC
1975 Zonal Avenue
Los Angeles, CA 90033...